OVERSIGHT BOARD AGENDA STAFF REPORT

TO: Honorable Chair and Members of the Oversight Board

FROM: Michael Huntley, Staff liaison from the Successor Agency to the former City of

Montebello Community Redevelopment Agency

SUBJECT: Consideration of retaining legal counsel for the Oversight Board

DATE: May 2, 2012

BACKGROUND

On April 24, 2012, the Oversight Board directed staff to identify legal counsel to provide service to the Board due to the complexity of issues that may arise related to the legislation in AB 1X 26.

DISCUSSION

Since the April 24, 2012 meeting, staff has identified 12 law firms that specialize in redevelopment law, real estate transactions and the legislation related to AB 1X 26. Staff contacted all of the law firms and e-mailed each of the firms an RFQ (Request for Qualifications). By the close of business on Monday, April 30, 2012, staff received five submittals from the following law firms:

- 1. Goldfarb Lipman Attorneys
- 2. Stradling Yocca Carlson & Rauth
- 3. Kane, Ballmer & Berkman
- 4. Pierce Law Firm
- 5. Meyers Nave

Staff had reviewed all of the RFQ submittals and it appears that all five firms are capable and qualified to provide service to the Oversight Board.

RECOMMENDATION

It is staff's recommendation that the Oversight Board provide direction on the process the Board wishes to undertake to retain legal counsel.

ATTACHMENTS

- 1. Goldfarb Lipman Attorneys RFQ
- 2. Stradling Yocca Carlson & Rauth RFQ
- 3. Kane, Ballmer & Berkman RFQ
- 4. Pierce Law Firm RFO
- 5. Meyers Nave RFQ

PIERCE LAW FIRM

A PROFESSIONAL CORPORATION

1440 NORTH HARBOR BOULEVARD, SUITE 900 FULLERTON, CALIFORNIA 92835 TELEPHONE (714) 449-3333 FACSIMILE (714) 449-3337 OUR FILE NO.
9999.002
SENDER'S EMAIL ADDRESS
BPierce@piercefirm.com

April 30, 2012

VIA EMAIL & FIRST CLASS MAIL

MHuntley@cityofmontebello.com

Michael Huntley Planning and Community Development Director City of Montebello 1600 W. Beverly Blvd. Montebello, CA 90640

Re: Informal Statement of Qualifications – Legal Counsel to the Oversight

Board for the City of Monterey Park, Acting as the Successor Agency to

the Redevelopment Agency

Dear Mr. Huntley:

WWW.PIERCEFIRM.COM

Thank you for this opportunity to submit this informal proposal to provide legal services to the Oversight Board for the City of Monterey Park, Acting as the Successor Agency to the Redevelopment Agency. I have extensive experience in all aspects of the redevelopment process as well as the acquisition and disposition of publicly owned property. Over the course of the last 6 months I have become very familiar with AB1x 26 and the resulting changes to California's Redevelopment Law.

The Pierce Law Firm is a professional corporation, AV-rated by Martindale Hubbell. My firm is certified by the California Department of General Services as a small business (Certification No. 1342480) and I have no cases or interests that pose a conflict or potential conflict with the Oversight Board, the City in its own capacity or as successor agency to the Redevelopment Agency, or any of the taxing entities represented on the Oversight Board. As explained below, the Pierce Law Firm is the ideal candidate to provide legal support for the Oversight Board.

The contact person and the lead attorney for this proposal is:

Bradley D. Pierce, Esq. PIERCE LAW FIRM, A Professional Corporation 1440 North Harbor Blvd, Ste. 900 Fullerton, California 92835 Phone: (714) 449-3333 Michael Huntley Planning & Community Dev. Dir. April 30, 2012 Page 2

Fax: (714) 449-3337

Email: <u>bpierce@piercefirm.com</u>

My redevelopment experience is briefly summarized in this letter and on my firm's website at www.piercefirm.com. I have been handling redevelopment projects and public agency disputes since 1996. Prior to establishing the Pierce Law Firm in 2008, I was a partner at a prominent downtown Los Angeles firm that focused on public agency and environmental law and later a partner at an Orange County firm that focused its practice on public agency and water law.

As noted on the enclosure and on the website, my firm represents public agencies, corporations, non-profits, individuals and elected officials on range of issues in litigation and litigation avoidance. This practice has provided me with the opportunity to handle a wide variety of public law issues that are relevant to the needs of the Oversight Board. While a large part of my practice has been involved in redevelopment and infrastructure projects, I have also advised clients, negotiated and litigated disputes involving: the Brown Act; the California Public Records Act; Conflict of Interest statutes and 1090 issues; breach of contract and property disputes between public agencies; and property rights disputes between individuals and agencies.

In my redevelopment practice, I have handled eminent domain and inverse condemnation actions, disposition and development agreements, exclusive negotiation agreements and public/private development agreements. I have also worked on a number of properties impacted with adverse environmental conditions and handled detailed easement and joint use agreements with neighboring property owners.

As a trial attorney, I have had the opportunity to try a number of cases to judgment and verdict, including cases for property owners and condemning agencies involving the acquisition of multiple properties and property interests. Working with public agencies has also allowed me to handle numerous public meetings, closed sessions and negotiations.

My experience handling redevelopment projects, transactions involving publicly owned property and familiarity with the rights and obligations of parties to DDAs and ENAs, when combined with my experience representing public agencies and disputes between public agencies, makes me uniquely qualified to advise the Oversight Board.

My philosophy is straight forward. I am committed to providing legal services that are targeted toward achieving the clients' goals on a cost-effective basis. To accomplish this, I personally handle all aspects of each case with my certified paralegal as my assistant. This drastically reduces the redundancies and numerous associate-partner meetings connected with the use of associate attorneys.

Michael Huntley Planning & Community Dev. Dir. April 30, 2012 Page 3

Enclosed with this letter are a brief Statement of Qualifications and a proposed fee schedule. My normal hourly billing rate is \$350 per hour. For work as counsel to the Oversight Board I propose \$265 per hour.

We thank you again for this opportunity to present this Proposal and for your time in considering our qualifications. We look forward to the opportunity to discuss our full range of capabilities in these areas with you in greater detail.

Mal/

Very truly you

Bradley D. I

BDP/lsd Enclosures

STATEMENT OF QUALIFICATIONS

FIRM PROFILE

At the Pierce Law Firm we provide the highest possible level of service in a prompt, cost effective manner. We represent public agencies, corporations, non-profits, individuals and elected officials in a range of issues involving litigation and litigation avoidance. While the most cost effective resolution to a dispute is usually a negotiated compromise, there are times when you need a trial attorney and a jury to resolve the dispute.

Established in June 2008, the Pierce Law Firm continues Brad Pierce's commitment to serving his clients with superior legal services that are targeted toward achieving our clients' goals on a cost-effective basis. He personally handles each case, thereby avoiding the redundancies and partner-associate meetings that frequently plague client bills. With over 18 years of experience handling issues unique to public agencies and public projects, Mr. Pierce has represented governmental entities, private owners and developers in redevelopment projects and cases involving eminent domain, inverse condemnation and property rights disputes and related issues, including challenges brought under the California Environmental Quality Act. He also practices in the areas of business and commercial litigation involving complex business issues.

Whether advising clients at public meetings, in closed session or negotiating with stakeholders, Mr. Pierce is familiar with the issues involved in completing public projects on time and on budget.

Brad Pierce is also a trial attorney with extensive experience in complex litigation actions. Known for effectively communicating his clients' positions with judges and juries alike, he has successfully handled a wide variety of real property and business disputes. He has been lead counsel for jury trials, handled appeals, writs and numerous public meetings.

BRADLEY D. PIERCE

ADMITTED

- California Bar in 1994 Bar No. 173785
- United States District Court, Central District of California, 1994
- United States Court of Appeals, Ninth Circuit, 1997
- United States District Court, Eastern District of California, 2000
- United States District Court, Southern District of California, 2002
- United States Court of Federal Claims, 2002

EDUCATION

- J.D., Loyola Law School (1994)
- B.S., Chapman University, *Dean's List* (1987)

Brad Pierce is AV rated by Martindale Hubbell and was recognized by Super Lawyers Rising Stars in 2004, 2005, 2006. His practice focuses on property rights disputes and disputes unique to public agencies. He handles cases on behalf of public agencies, private property owners and elected officials.

He has acted as Special Counsel and Litigation Counsel for: Counties, Cities, School Districts, Airport Districts, numerous types of special districts and public utilities. He handles a variety of disputes for public agencies when the issue calls for his expertise or general counsel has a conflict.

Brad graduated from Loyola Law School, Los Angeles in 1994, and was recognized for his academic performance with membership in the St. Thomas More Law Honor Society. As an undergraduate he attended Chapman University where he received his BS in Business, with a major in Economics and a minor in Legal Studies.

Before founding the Pierce Law Firm, he was a partner at a law firm in downtown Los Angeles where he focused on eminent domain, redevelopment, environmental law and issues unique to public agencies. More recently, Brad was a partner at a municipal and water law firm in Orange County where he was responsible for redevelopment

projects and advising public agency clients concerning public improvement projects and various contractual relationships, as well as the right-of-way work for all of the firm's clients.

Brad stays active in organizations and activities that keep him current in the practice and on the forefront of emerging issues. His memberships include:

- Co-Chairman, State Bar of California, Inverse Condemnation/Eminent Domain –
 South Subsection of the Real Property Law Section (2003-current) and member of Real Property and Public Law Sections;
- Member, Orange County Bar Association Environmental Law Section;
- Los Angeles County Bar Association Real Property Section, Condemnation and Land Valuation Committee
- Advisory Board Member, Program in Environmental, Land Use, and Real Estate
 Law Chapman University School of Law
- Law Chair, International Right of Way Association, Chapter 1 (2001-2005)
- Member, International Right of Way Association, Chapter 67

RECENT PUBLICATIONS & PRESENTATIONS

- The Perils of Public Improvement Projects (Sept. 2, 2011), The L.A. Daily Journal
- Judicial Takings: A Decision Without a Decision (2011) volume 29, No. 1,
 California Real Property Journal, 4
- Climate Change, Transportation and Redevelopment: Redevelopment,
 Building Better Communities (October 2008)
- Climate Change, Land Use and Smart Growth: Redevelopment Holds a Key to a Better Future, California Environmental Law Reporter 145 (April 2008)

- California Supreme Court Addresses the Roles of Judge and Jury in Eminent
 Domain Cases (2007) volume 25, No. 3, Cal. Real Property Journal, 48
- Eminent Domain in California: Policies & Procedures, Lorman Education
 Services, Oxnard, CA (October 25, 2007)
- Photo Enforcement: Red Light and Speed, Judicial Council of California,
 Administrative Office of the Courts, Traffic Adjudication Institute, Torrance,
 CA (March 21-23, 2007)
- Post Kelo Blowback: The "Protect Our Homes Act" and Other Legislative
 Proposals in California, Los Angeles County Bar Association Real Property
 Section, Los Angeles, CA (September 13, 2006)
- Goodwill Loss Claims: Effectively Developing a Record and Minimizing
 Inflated Claims for Compensation, California Redevelopment Association's
 (CRA) Legal Services Symposium, Long Beach, CA (August 9-10, 2006)
- Eminent Domain in California, Lorman Education Services, Pasadena, CA (June 29, 2006)
- Update on Loss of Goodwill Issues, CLE International's 8th Annual
 Conference in Eminent Domain (June 8-9, 2006)
- Goodwill and the Taking of a Business, International Right of Way Association (IRWA), Annual Fall Seminar, Montebello, California (October 19, 2005)
- Goodwill Loss Entitlement and Proof, California Redevelopment
 Association's (CRA) Legal Issues Symposium, San Jose, California (August 10, 2005)
- Goodwill and the Taking of a Business, CLE International's Seventh Annual
 Conference on Eminent Domain, Los Angeles, California (June 20, 2005)
- Multi-Property Appraisal of Partial Takings (Severance Damages),
 International Right of Way Association (IRWA), Chapter 1, Annual Valuation
 Conference, Downey, California (April 26, 2005)

PROPOSED FEE SCHEDULE

A. RATES FOR LEGAL PERSONNEL:

Attorneys \$265.00
Paralegals \$125.00

B. STANDARD CHARGES:

Attorney time is charged in minimum units of 0.1 hours (6 minutes).

C. COSTS AND EXPENSES:

In-Office Photocopying 15¢/page Color Copies \$1.00/page Mileage 50¢/mile

Other costs and expenses not specifically listed will be charged at our cost.

633 W. 5th Street, Suite 1700 Los Angeles, California 90071 tel (213) 626-2906 fax (213) 626-0215 www.meyersnave.com

James M. Casso Attorney at Law jcasso@meyersnave.com



April 30, 2012

Michael Huntley, Planning and Community Development Director City of Montebello 1600 W. Beverly Blvd. Montebello, CA 90640

Re: Qualifications to Serve as Legal Counsel to Montebello Oversight Board

Dear Mr. Huntley:

Thank you for contacting Meyers Nave regarding the opportunity to serve as legal counsel for the City of Montebello's Oversight Board. On behalf of the firm, I am pleased to present our qualifications for this engagement.

Meyers Nave proposes that I serve as lead counsel and will attend the board meetings. Stephanie Downs will assist me as needed. As you know, the Oversight Board is charged with supervising the activities of the Successor Agency and ensuring that assets from the former RDA are appropriately distributed to taxing entities. Stephanie and I have experience in board governance, public finance and real estate law, which we summarized below. Our resumes are also enclosed.

I currently serve as legal counsel for the oversight boards of the cities of Buellton, Goleta and Lompoc, counseling on procedures and analysis and approval of recognized obligation payment schedules. I also have advised the County of Los Angeles on the formation of their oversight boards and in analyzing the actual or potential conflict of interest for proposed appointees in addition to the analysis of the specific obligations on recognized obligation payment schedule.

Along with general governance laws (Brown Act, Public Records Act and conflicts of interest), I have advised many of the firm's clients in disputes relating to the allocation of property tax revenues to cities, counties, and special districts. Drawing on my experience, I have been assisting our redevelopment attorneys in advising successor agency and special district clients on AB x1 26's provisions relating to the distribution of property tax revenues to taxing entities and on oversight board startup and governance issues.

Pertaining to my redevelopment work, I served as co-lead counsel for the \$2 billion redevelopment of the Hollywood Park racetrack for the City of Inglewood. The track, located three miles east of Los Angeles International Airport, is the largest parcel of

Michael Huntley April 30, 2012 Page 2

undeveloped land in the Greater Los Angeles Area. Hollywood Park Tomorrow will create a vast mixed-use community on 238 acres—almost 3,000 residential units, 620,000 square feet of retail space, 75,000 square feet of office space, a large hotel, 25 acres of park space and a 4-acre civic site. Development of the preliminary plan involved an extensive planning process and fiscal analysis.

I also served as lead counsel for the City of South El Monte's Redevelopment Agency, advising on its nearly \$10 million, 72-unit affordable housing and mixed-used project for seniors. This project was one of the largest senior housing developments in recent years in the San Gabriel Valley. Another significant project that I served as lead counsel was for the \$25 million shopping center for the City of La Puente. Built on a lot that was vacant since 1991, I assisted the City's redevelopment agency to acquire the property and drafted the requisite agreements for its eventual disposition and development. This is the first major development project in La Puente in nearly 25 years.

Given my experience as a city attorney and redevelopment agency general counsel, I have a comprehensive understanding of local agency procurement and contracting policies and procedures. I have been charged with drafting all agreements involving the redevelopment agencies I represented. These include disposition and development agreements, owner participation agreements and affordable housing agreements.

We propose Stephanie to assist due to her specialized experience in redevelopment, public finance and real estate matters. She currently provides legal services for the City of Berkeley's Oversight Board. Stephanie also served as general counsel and deputy counsel to several former redevelopment agencies. She has extensive experience advising successor agencies on provisions related to AB x1 26 since its passing in June of 2011. She also has counseled on issues related to the sale of major real estate holdings, which is directly applicable to the Oversight Board's mission. Stephanie's public finance practice focuses on structure, negotiation and documentation for a broad range of tax-exempt and taxable financings as bond counsel, disclosure counsel and issuer's counsel. Some of her clients include the cities of Pinole and Pittsburg, the County of Monterey, the Central Contra Costa County Sanitary District, and the Tamalpais Community Services District.

Regarding litigation, I typically coordinate and am actively involved in overseeing the cases; however, we usually delegate the day-to-day case management to the firm's litigation team. This team has advised on complex litigation matters for the Community Redevelopment Agency of the City of Los Angeles (CRA/LA), and the redevelopment agencies of the City of Fresno, the City of San Leandro, and the City of South San Francisco.

Another core advantage I would like to highlight here is the firm's institutional knowledge. Having served public agencies as long as we have, our 80-plus attorneys have seen, researched and dealt with many of the issues our clients face, giving us a broad and comprehensive perspective on many different challenges, including the new challenges brought forth with the disbandment of redevelopment agencies. In the past year, we have assisted many of these agencies transition in response to Assembly Bill x1 26.

Today, our attorneys are guiding public agencies in the post redevelopment world. In fact, we recently held a complimentary four-part webinar series on economic development in the aftermath of redevelopment agencies, attended by hundreds of public agency staff and officials throughout the state. We have also been asked by cities to advise in both general and special counsel capacities regarding the responsibilities of their successor agencies and oversight boards. Key to our delivery in these endeavors is our full-service model—the very basis of our firm's founding. Now more than ever, this model has proved vital in helping public agencies tackle multiple issues simultaneously in response to the state's decision to dissolve redevelopment agencies.

To represent the Oversight Board for the City of Montebello, we propose an hourly rate of \$275 for Principal services and \$235 for Associate services. Given the depth of our team as well as the firm, we strongly believe the City can rely on us to ultimately deliver services efficiently with legal solutions that are practical, creative and innovative.

Thank you for consideration of Meyers Nave to represent the Oversight Board. Please do not hesitate to contact me at any time to discuss this engagement further.

Very truly yours,

James M. Casso

meyers | nave

JAMES M. CASSO



James M. Casso Principal

633 West Fifth Street, 17th Floor Los Angeles, CA 90071

T: 213.626.2906 F: 213.626.0215 jcasso@meyersnave.com

Practice Groups

Municipal and Special District Law

Redevelopment, Real Estate and Affordable Housing

Crisis Management: Public Policy, Ethics and Investigations

California Bar Number 146423

Education

Georgetown University, JD University of California San Diego, BA

Practicing Since: 1990

James (Jamie) Casso serves as the Principal in Charge of Meyers Nave's Los Angeles office. His practice focuses on providing counsel to cities and other public agencies throughout Southern California. In 2011, Jamie was selected by the *Daily Journal* as one of California's "Top 25 Municipal Lawyers."

He brings to the firm an in-depth knowledge of all aspects of public law and redevelopment law. As a city attorney, he provides advice and representation on a broad range of legal issues faced on a daily basis by public agencies, including matters involving local agency election law, the Brown Act, the Public Records Act and the Political Reform Act. As redevelopment counsel, Jamie has handled substantive matters involving: real property development; mixed-use development; low and moderate housing; public-private partnerships; environmental agreements and remediation; and the purchase, sale, lease and financing agreements that involve complex land use, planning and zoning issues.

Jamie serves as Interim City Attorney for the City of La Puente and as Special Counsel to the successor agency to the former South El Monte Community Development Commission, the former La Puente Community Development Commission, the former Community Redevelopment Agency of the City of Guadalupe, the former Redevelopment Agency of the City of Pismo Beach and the former Community Development Agency of King City. He served as Special Counsel to the City of Inglewood Redevelopment Agency.

In August 2010, Jamie was hired by the City of Bell to serve as its Interim City Attorney to deal with the myriad of issues facing the City and to assist in the corruption investigation of the practices of Bell's former administration. Through his efforts, the City of Bell implemented open and transparent practices as well as revealing the corruption. Jamie also drafted two legislative proposals that were unanimously

adopted by the State Legislature addressing some of the problems facing Bell. In addition, Jamie has provided insightful consultation to a bipartisan group of state legislators seeking to address many of the issues learned from his experience in Bell.

From 2007 to 2010, Jamie served as General Counsel to the Water Replenishment District of Southern California and from 2001 to 2007, he was the City Attorney and Redevelopment Agency Counsel for the City of Pico Rivera.

Jamie also served as the long-time Chief of Staff for former U.S. Congressman Esteban E. Torres, gaining more than 30 years of public policy experience and knowledge. During his tenure with Congressman Torres, he spearheaded the formation of federal funding legislation aimed at addressing public transportation projects throughout California, but particularly in Southern California. He was the Congressman's chief advisor in the development of legislation dealing with the clean-up of groundwater contamination in the San Gabriel Valley and related conjunctive use and groundwater storage agreements involving the Bureau of Reclamation and the Department of the Interior. Jamie has an intimate understanding of the federal and state legislative and regulatory processes as well as federal transit issues. He regularly consults with state and federal elected officials on public policy matters of local concern.

Jamie has represented several public and private entities before federal, state and local elected officials and agencies. He is known for developing pragmatic solutions to complex problems, and he has longstanding working and personal relationships with elected officials in California and Washington, D.C.

meyers | nave

STEPHANIE DOWNS



Stephanie Downs Associate

555 12th Street, Suite 1500 Oakland, CA 94607

T: 510.808.2000 F: 510.444.1108 sdowns@meyersnave.com

Practice Groups

Redevelopment, Real Estate and Affordable Housing

Public Finance

California Bar Number 236551

Education

University of San Francisco School of Law, JD. 2004

University of Wisconsin at Madison, BBA in Finance

Practicing Since: 2005

Stephanie Downs is the Assistant City Attorney for the City of Pinole and advises the city and her other clients on real estate, redevelopment and public finance matters. Her real estate and redevelopment practice encompasses the wide scope of transactions, including implementation and development of affordable housing; resolution of relocation issues; adoption, implementation and amendment of redevelopment plans; and compliance with the legal requirements of the Community Redevelopment Law. She has assisted cities, redevelopment agencies and special districts with preparation of affordable housing regulatory agreements, leases, disposition and development agreements, loan documents, purchase and sale agreements, implementation plans, easements and covenants, conditions, and restrictions. Stephanie's public finance practice focuses on structure, negotiation and documentation for a broad range of tax-exempt and taxable financings as bond counsel, disclosure counsel and issuer's counsel.

Due to her extensive experience in both redevelopment and public finance matters, Stephanie is frequently engaged to assist in redevelopment projects in which the developer has gone into default. She has worked with banks, agency staff and developers to ensure positive outcomes in such cities as Pinole and Pittsburg in California and in Henderson, Nevada.

Before attending law school, Stephanie worked in banking and finance. As a commercial banker, she structured complex financings for corporate and middle-market clients throughout the United States. As Finance Manager for the Port of San Francisco, she negotiated ground leases and public-private partnerships for Port development projects. Representative projects include rehabilitation of the historic ferry building, the AT&T ballpark and the Pier 1 maritime office development.

Stephanie's public finance experience also includes her roles as Debt Manager for the City and County of San Francisco and Finance Officer for the Regents of the University of California. In these positions, she issued over \$20 billion in debt for public infrastructure projects, including seismic upgrades, park improvements, water and wastewater improvements, co-generation facilities, hospitals, health clinics, housing, and parking facilities. Debt issuance structures include revenue bonds, leases, certificates of participation, tax and revenue anticipation notes, private placements, and commercial loans. Her experience extends to direct and conduit financings, fixed and variable rate securities, current and advance refundings, interest rate swaps and other derivative products, and credit and liquidity enhancement—including bond insurance, letters of credit and standby letters of credit.

During law school, Stephanie was the recipient of the CALI Award for Excellence in Corporate Tax and the CALI Award for Excellence in Law and Literature.

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515 S. FIGUEROA STREET SUITE 1850 LOS ANGELES, CALIFORNIA 90071 TELEPHONE (213) 617-0480 FAX (213) 625-0931

BRUCE D. BALLMER (RETIRED)

ROBERT P. BERKMAN (1919-2001) 402 WEST BROADWAY 4TH FLOOR SAN DIEGO, CALIFORNIA 92101 TELEPHONE (619) 567-3450 FAX (619) 567-3448

Royce Jones royce@kbblaw.com Direct (213) 452-0126

> Gustavo Lamanna gustavo@kbblaw.com Direct (213) 452-0131

Writers:

File No. 058-006

April 26, 2012

<u>Via E-Mail MHuntley@cityofmontebello.com</u> <u>and Overnite Express</u>

Michael Huntley Planning and Community Development Director City of Montebello 1600 West Beverly Boulevard Montebello, California 90640

Re: Proposal for Legal Services

Oversight Board for the Successor Agency to the

Community Redevelopment Agency of the City of Montebello

Dear Mr. Huntley:

Thank you for providing us with the opportunity to provide this proposal for legal services to the Oversight Board for the Successor Agency to the Community Redevelopment Agency of the City of Montebello ("Oversight Board"). With our firm's extensive background in providing legal services on all facets of redevelopment law and Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) ("AB 26"), we believe the services required in connection with Oversight Board duties and obligations fall within this firm's area of expertise. We propose to assist you with carrying out your statutory role as the Oversight Board, as shown in Attachment A.

All proposed legal services will be provided primarily by Murray O. Kane, Royce Jones and Gustavo Lamanna, with the assistance of other attorneys in our office as needed. Detailed information regarding the professional experiences of Mssrs. Kane, Jones and Lamanna appear in Attachments B, C, and D. We also include our Firm Resume showing our deep history in redevelopment and understanding of agency operations in Attachment E.

In addition, we enclose a Fee Schedule and Proposed Legal Services Agreement in connection with proposed as-needed legal services to the Oversight Board behind Attachments F

KANE, BALLMER & BERKMAN

Re: Proposal for Legal Services

April 26, 2012

Oversight Board for the Successor Agency to the

Page 2

Community Redevelopment Agency of the City of Montebello

and G. Such services would be billed upon an as-needed basis and would include legal advice and preparation of appropriate documentation. If requested, we will attend public meetings for the Oversight Board. The costs of all services would be based on the hourly fee rates listed in the Fee Schedule.

Our offices are located in downtown Los Angeles, and we would be readily available to provide the necessary legal services on an expeditious basis.

Our office has been called upon regularly by numerous members of the redevelopment community for interpretations of AB 26. In fact, in response to a request from city attorney clients, we obtained approval from the California State Bar to issue 1.25 hours of mandatory continuing legal education as a provider of legal education for our presentation and materials on AB 26.

We appreciate your time and consideration of our proposal and look forward to hearing from you regarding our assistance to the Oversight Board. We are excited at the prospect of assisting your Oversight Board in the important tasks ahead. If you have any questions or comments or would like additional information, please contact Royce Jones at (213) 452-0126 or Gustavo Lamanna at (213) 452-0131.

Respectfully,

KANE, BALAMER & BBRKMAN

Royce Jones

Gustave Lamanna

Encls.

cc: Murray Kane, Esq.

1. Name of Firm, Lead Attorneys, and Contact Information:

Name of Firm
KANE BALLMER & BERKMAN

Lead Attorneys
Murray Kane, Esq.
Royce Jones, Esq.
Gustavo Lamanna, Esq.

Contact Information
Kane, Ballmer & Berkman
515 South Figueroa Street, Suite 1850
Los Angeles, California 90071
Main Telephone: (213) 617-0480
Facsimile: (213) 625-0931

Mr. Kane Direct Dial: (213) 452-0121 Mr. Jones Direct Dial: (213) 452-0126 Mr. Lamanna Direct Dial: (213) 452-0131

2. Description of Legal Counsel Services Provided to Oversight Board:

Kane, Ballmer & Berkman proposes to serve as special counsel to render legal services to City when and as requested by City. Services to be performed include, but are not limited to the rendering of legal advice, in connection with the obligations imposed by Part 1.85 of Assembly Bill No. 26 (1st Ex. Sess.) as set forth in California Health & Safety Code sections 34170 through 34191, and as needed thereafter in connection therewith (the "Project"). The services include consultation pertaining to interpretation, application and enforcement of the California law applicable to the Project as well as: furnishing of written legal opinions; drafting and preparation of necessary legal contracts and documents; legal review and approval of contracts and documents; attendance at local hearings or other meetings as required; and litigation services; all as requested by City concerning the Role of the Oversight Board (See Attachment A)

3. <u>Biography for each individual to render service on behalf of Legal Counsel to Oversight Board</u>

All proposed legal services will be provided primarily by attorneys Murray O. Kane, Royce Jones and Gustavo Lamanna, with the assistance of other attorneys in our office as needed. Detailed information regarding the professional experiences of Mssrs. Kane, Jones and Lamanna appear as Attachments. B, C, and D.

4. Knowledge and Experience of Redevelopment Law, etc.

Our firm has a deep history in redevelopment. Our firm founder, Eugene Jacobs, served in the California Attorney General's office in one of the first published cases concerning redevelopment and was the lead attorney for the City of Los Angeles concerning the published case concerning the downtown Los Angeles redevelopment plan for Bunker Hill. We include our Firm Resume showing the continuation of our deep history in redevelopment and understanding of agency operations. (See Attachment E)

With our firm's extensive background in providing legal services on all facets of redevelopment law and Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) ("AB 26"), we have been called upon to serve as special counsel to successor agencies and oversight boards throughout the State. We leverage our expertise with the over three dozen former redevelopment agency clients on behalf of successor agencies and oversight boards with the appropriate level of advocacy for each client. We believe the services required in connection with oversight board duties and obligations for the Successor Agency of the Community Redevelopment Agency of the City of Montebello fall within this firm's area of expertise. We are excited at the opportunity to assist you at these crucial times in your City's history.

5. Schedule of Services and Rates

We enclose our proposed rates and agreement as Attachments F and G.

Attachment A

515 S. FIGUEROA STREET SUITE 1850 LOS ANGELES, CALIFORNIA 90071 TELEPHONE (213) 617-0480 FAX (213) 625-0931

BRUCE D. BALLMER (RETIRED)

ROBERT P. BERKMAN (1919-2001) 402 WEST BROADWAY 4TH FLOOR SAN DIEGO, CALIFORNIA 92101 TELEPHONE (619) 567-3450 FAX (619) 567-3448

<u>Legal Services Proposed</u> Counsel to the Oversight Board for the Successor Agency of the Community Redevelopment Agency of the City of Montebello and administration of obligations

Role of the Oversight Board (Part 1.85 of Assembly Bill No. X1 26)

Introduction:

Part 1.85 of Assembly Bill No. 26 (1st Ex. Sess.) ("AB 26") is set forth at California Health and Safety Code Sections 34170 through 34191. Pursuant to Part 1.85 of AB 26, all redevelopment agencies in California were dissolved on February 1, 2012 and a successor agency was designated a successor entity of each former redevelopment agency and vested with the responsibility of winding down the business and fiscal affairs of its former redevelopment agency.

Section 34179 of AB 26 establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The purpose of the oversight board is to generally oversee the activities of the successor agency and to approve certain actions of the successor agency in connection with the successor agency's wind-down of the affairs of the former redevelopment agency. The primary regulations governing the oversight board are set forth at Sections 34179 through 34181 of AB 26.

Background:

Pursuant to Part 1.85 of AB 26, the City Council of the City of Montebello ("City") likely adopted a resolution electing for the City to serve as the successor agency ("Successor Agency") to the Community Redevelopment Agency of the City of Montebello ("RDA") upon the dissolution of the RDA on February 1, 2012.

The oversight board has likely been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Section 34179 of AB 26.

General Regulations of the Oversight Board:

Section 34179 of AB 26 provides the following regulations on the governance and operation of the Oversight Board:

- ➤ The Oversight Board includes seven (7) members who were selected as follows:
 - One member appointed by the Los Angeles County Board of Supervisors.
 - One member of the public appointed by the Los Angeles County Board of Supervisors.
 - One member appointed by the Mayor of the City.
 - One member appointed by the Mayor of the City to represent the employees of the former RDA.
 - One member appointed by the largest special district, by tax share, with territory in the territorial jurisdiction of the former RDA.
 - One member appointed by the Los Angeles County Board of Education.
 - One member appointed by the Chancellor of the California Community Colleges, to represent community college districts in Los Angeles County.
- ➤ The members of the Oversight Board shall elect one of their members to serve as the Chairperson and shall report the name of the Chairperson and other members of Oversight Board to the State Department of Finance on or before May 1, 2012.¹
- ➤ The California Governor may appoint any Oversight Board member position that remains vacant for more than sixty (60) days.
- A member of the Oversight Board may simultaneously be appointed to up to five (5) oversight boards and may hold an office in a city, county, city and county, special district, school district or community college district.
- ➤ Commencing on and after July 1, 2016, there will only be one oversight board appointed for all successor agencies in Los Angeles County, with the members appointed in accordance with Section 34179 of AB 26.
- > The Oversight Board shall cease to exist when all of the indebtedness of the former RDA has been repaid.
- > The Oversight Board may direct the staff of the Successor Agency to perform work in furtherance of the Oversight Board's duties and responsibilities under AB 26. The Successor Agency shall pay for all of the costs of meetings of the Oversight Board and may include such costs in its administrative budget.

¹ The members of the Oversight Board may also consider electing one of their members to serve as the Vice-Chairperson.

- ➤ Members of the Oversight Board shall serve without compensation or reimbursement for expenses.
- Members of the Oversight Board shall have personal immunity from suit for their actions taken within the scope of their responsibilities under AB 26.
- > A majority of the total membership of the Oversight Board shall constitute a quorum for the transaction of business.
- A majority vote of the total membership of the Oversight Board is required for the Oversight Board to take action.
- > The Oversight Board is deemed a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974.
- All notices required by law for proposed Oversight Board actions shall also be posted on the Successor Agency's internet website or the Oversight Board's internet website.
- Each member of the Oversight Board shall serve at the pleasure of the entity that appointed such member.
- ➤ The State Department of Finance may review an Oversight Board action taken pursuant to AB 26. All Oversight Board actions shall not be effective for three (3) business days, pending a request for review by the State Department of Finance.
- ➤ If the State Department of Finance requests a review of a given Oversight Board action, the State Department of Finance shall have ten (10) days from the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration and such Oversight Board action shall not be effective until approved by the State Department of Finance. In the event that the State Department of Finance returns the Oversight Board action to the Oversight Board for reconsideration, the Oversight Board shall resubmit the modified action for the State Department of Finance approval and the modified Oversight Board action shall not become effective until approved by the State Department of Finance.
- > The Oversight Board shall designate an official to whom the State Department of Finance may make requests to review an Oversight Board action and with whom the State Department of Finance may communicate in connection with such requests.
- > The Oversight Board has a fiduciary responsibility to both the holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues.
- > The Oversight Board has the authority and standing to appeal any judgment entered by a competent court of law or to set aside any settlement or arbitration decision against the former RDA.

Successor Agency Actions/Matters Requiring Oversight Board Approval:

- > Section 34180 of AB 26 specifically requires that each of the following actions of the Successor Agency be first approved by the Oversight Board:
 - Establishing new repayment terms for outstanding loans where the terms have not been specified prior to February 1, 2012.
 - Refunding of outstanding bonds or other debt of the former RDA by the Successor Agency in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated.
 - Setting aside of amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding bonds of the former RDA.
 - Merging of redevelopment project areas.
 - Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, where assistance is conditioned upon the provision of matching funds by the Successor Agency in an amount greater than five percent (5%).
 - If the City wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax for the value of the property retained. If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by the County Assessor.
 - Establishing the Recognized Obligation Payment Schedule prepared by the Successor Agency for each upcoming six (6) month fiscal period.
 - A request by the Successor Agency to enter into an agreement with the City.
 - A request by the Successor Agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to AB 26.
- ➤ In addition to the above, various sections of Part 1.85 of AB 26 require the Oversight Board's approval of the following actions of the Successor Agency:
 - Amendments to the Enforceable Obligation Payment Schedule as may be adopted by the Successor Agency.
 - The Administrative Budget prepared by the Successor Agency for each upcoming six (6) month fiscal period.

- The Administrative Cost Allowance amount, as estimated by the Successor Agency, that is payable to the Successor Agency from property tax revenues of up to five percent (5%) of the property tax allocated to the Successor Agency for the 2011–2012 fiscal year and up to three percent (3%) of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the Successor Agency for each fiscal year thereafter; provided, however, that the amount shall not be less than \$250,000 for any fiscal year or such lesser amount as agreed to by the Successor Agency.
- The termination of any existing legally binding and enforceable agreements or contracts and providing any necessary and required compensation or remediation for such termination.
- The repayment schedule of amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of the former RDA, which had been deferred as of June 28, 2011.
- Making payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule.
- The use of other revenues not specified in Section 34177(l)(1), derived from the former RDA, as a source of payment for enforceable obligations listed on the Recognized Obligation Payment Schedule.
- Agreements with the City which the Successor Agency desires to enter, or reenter if previously entered by the former RDA.

Oversight Board Direction of the Successor Agency:

- Section 34181 of AB 26 requires the Oversight Board to direct the Successor Agency to do all of the following:
 - Dispose of all assets and properties of the former RDA that were funded by tax increment revenues of the former RDA; provided, however, that the Oversight Board may instead direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset.
 - Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.
 - Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the City as the successor housing entity² under AB 26.

² Pursuant to Part 1.85 of AB 26, the City Council of the City adopted Resolution No. R2M12-2 on January 9, 2012 electing for the City to serve as the successor housing entity ("Successor Housing Agency") to the RDA upon the dissolution of the RDA on February 1, 2012.

- Terminate any agreement, between the former RDA and any public entity located in the same County, obligating the former RDA to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the Oversight Board has found that early termination would be in the best interests of the taxing entities.
- Determine whether any contracts, agreements, or other arrangements between the former RDA and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for its approval. The Oversight Board may approve any amendments to or early termination of such agreements where it finds that amendments or early termination would be in the best interests of the taxing entities.

Duties of the Successor Agency:

Since the primary purpose of the Oversight Board, pursuant to AB 26, is to generally oversee activities of the Successor Agency in connection with the Successor Agency's wind down of the affairs of the former RDA, the following outlines the primary statutory duties of the Successor Agency under AB 26. However, not all actions taken by the Successor Agency in furtherance of its duties under AB 26 require Oversight Board approval or direction, which such approval or direction is limited to the actions of the Successor Agency stated above.

- > Specifically, Section 34177 of AB 26 requires the Successor Agency to do all of the following:
 - Continue to make payments due for enforceable obligations.
 - Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of bonds of the former RDA.
 - Perform obligations required pursuant to enforceable obligations.
 - Remit unencumbered balances of former RDA funds to the County Auditor-Controller for distribution to the taxing entities.
 - Dispose of assets and properties of the former RDA as directed by the Oversight Board or otherwise transfer ownership of certain assets as directed by the Oversight Board.
 - Enforce all former RDA rights for the benefit of the taxing entities.
 - Effectuate the transfer of housing functions and assets to the City, as the successor housing entity under AB 26.
 - Expeditiously wind down the affairs of the former RDA, in accordance with direction from the Oversight Board.
 - Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former RDA can be transferred to other parties.
 - Use bond proceeds for the purposes for which the bonds were sold unless the purposes can no longer be achieved.

- Prepare a proposed administrative budget for each upcoming six-month fiscal period and submit said budget to the Oversight Board for approval.
- Provide to the County Auditor-Controller the administrative cost estimates from the approved administrative budget for each upcoming six-month fiscal period that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund.
- Prepare a Recognized Obligation Payment Schedule before each six-month fiscal period and submit said schedule to the Oversight Board for approval. Once the Recognized Obligation Payment Schedule is approved, submit a copy of the approved Recognized Obligation Payment Schedule to the County Auditor-Controller, the State Controller's Office and the State Department of Finance, and post the approved Recognized Obligation Payment Schedule on the Successor Agency's internet website.

Attachment B

MURRAY O. KANE

Education:

University of California at Los Angeles A.B. 1967 J.D. 1970

Professional Experience:

Mr. Kane is a nationally prominent lawyer specializing in the practice of redevelopment law. Mr. Kane joined the firm in 1973 and has been a principal of the firm since 1978. He has extensive experience in all phases of redevelopment, including the creation, organization, administration, and dissolution of redevelopment agencies, creation of projects, relocation and owner participation, public improvements, and land disposition. He served as General Counsel for the former Community Redevelopment Agency of the City of Los Angeles for over fifteen (15) years and has been primarily responsible for the firm's representation of the former Culver City, Palmdale, Huntington Beach, Santa Monica, Los Angeles, Indio, Moreno Valley, Pasadena, and Redondo Beach redevelopment agencies. Further, Mr. Kane advises municipalities and successor agencies and successor housing entities of former redevelopment agencies on all facets of Assembly Bill No. 26 (2011-2012 1st Ex. Sess.) signed by the California Governor on June 28, 2011 in connection with the dissolution of former redevelopment agencies, the establishment of successor agencies, successor housing entities and oversight boards, the wind down of such agencies' business and fiscal affairs, and the appropriate uses of former redevelopment agency funds, including tax increment, pursuant to the California Community Redevelopment Law as amended by Assembly Bill No. 26.

Mr. Kane also served as litigation counsel on validating actions involving the Central Business District Redevelopment Project of the City of Los Angeles, the Alpine Redevelopment Project of the City of Tulare, the Village Redevelopment Project of the City of Claremont, the Redevelopment Plan of the Community Redevelopment Agency of the City of Santa Ana, and other projects.

Among his other most noteworthy accomplishments have been:

- Creator of concept of insurability of Orders of Immediate Possession to permit conveyance and construction financing prior to Agency property ownership.
- Advised on first use of tax increment for affordable housing. 1974-75 (Mission Inn, Riverside and Airport Move-On Program, Los Angeles).
- Drafted redevelopment plan language as the basis for redevelopment affordable housing set aside legislation.
- Successful adoptions of redevelopment plans under Disaster Redevelopment (Including Whittier plan, adopted six weeks after October, 1987 earthquake, and Santa Monica and five Los Angeles Earthquake Recovery Plans adopted after January, 1994 earthquake).
- Lead attorney in the negotiation and documentation of such projects as:
 - Fox Hills Mall, Culver City
 - · Central Library Revitalization Project

Maguire/Thomas Library Tower Project

· County of Los Angeles First Street Properties

· San Jose Convention Center Hotel

Corporate Pointe, Culver City

· Waterfront Project, Huntington Beach

Mr. Kane is a frequent lecturer on redevelopment topics to such organizations as the League of California Cities, the Los Angeles County Bar Association and the California Redevelopment Association, as well as serving as periodic guest lecturer of the Schools of Law and Business (Real Estate) of the University of Southern California. Mr. Kane has testified on the financing of redevelopment projects before Legislative Committees of the States of California, Colorado and Kansas. Mr. Kane has also testified as an expert witness of the subject of redevelopment in the Superior Court of the State of California for the County of Los Angeles and the County of Napa. His expert testimony was expressly relied upon by the California Supreme Court in Napa v. Marek, a major case decided in favor of former redevelopment agencies of the State of California. Mr. Kane has also been shown as counsel on the following published cases in the CEQA field:

- Castaic Lake Water Agency vs. City of Santa Clarita 41 Cal. App. 4th 1257 (1995) [Challenge to CEQA Emergency Exemption; challenge upheld in favor of our client Castaic Lake]
- Friends of Mammoth vs. Town of Mammoth Lakes (II) 82 Cal.App. 4th 511 (2000) [Adequacy Challenge]. Petition for review denied. Request to de-publish denied.

Before joining the firm, Mr. Kane served as City Prosecutor, Assistant City Attorney and Acting City Attorney for the City of Culver City, California.

In those capacities, Mr. Kane had personal and primary responsibility for providing legal services to all levels of city government on all aspects of municipal law. He served as legal counsel to City Council and Planning Commission, and prosecuted all misdemeanors occurring within the City (both State and Municipal Code) and advised and defended the police department and its officers in civil and criminal matters. He drafted all revisions to the Municipal Code and all City ordinances, resolutions and contracts, and represented City and its officers and employees in state and federal courts in many civil litigation matters, including police department matters, attacks on validity of City ordinances and regulations, municipal finance, and personnel matters.

Attachment C

ROYCE K. JONES

Education:

University of Southern California - J.D. - 1982 University of Southern California - A.B. - 1978 (Dual Degree- Political Science and History)

Experience:

Mr. Jones is a widely recognized both within and outside of the State of California as a lawyer specializing in the area of redevelopment, municipal, environmental and land-use law. Since joining the firm, Mr. Jones has represented several cities, former redevelopment agencies, public agencies as well as various private clients of the firm.

Focusing particularly in the areas of real estate financing and affordable housing, Mr. Jones is called upon by clients to handle those matters involving major and complex real estate and land use transactions. These transactions include commercial/retail shopping centers, industrial and business parks, office, residential (market rate and affordable) and mixed-use developments both within and outside the context of redevelopment. Mr. Jones also has extensive experience in redevelopment plan adoptions and validations, owner participation rights, relocation benefits and protection, zoning and land use regulations and entitlements, hazardous waste/toxic material liability and remediation, and federal and state environmental quality control and regulatory issues.

Since the elimination of redevelopment agencies, Mr. Jones' primary focus has been on advising various municipalities, successor agencies and successor housing entities of former redevelopment agencies regarding the dissolution of former redevelopment agencies, formation and establishment of successor agencies, successor housing entities, and oversight boards as mandated by Assembly Bill No. 26 (2011-2012 1st Ex. Sess) signed by California Governor Brown on June 28, 2011 and the appropriate use and allocation of former redevelopment agency tax increment and other available funding.

As a result of his legal accomplishments in the fields of real estate and redevelopment, Mr. Jones regularly speaks at various real estate seminars as an invited speaker. One such speaking engagement includes the California State Bar convention at which Mr. Jones addressed the Real Estate Section. In addition, has sat on the Advisory Board of the University of Southern California Minority Real Estate Developer Program.

To complement his real estate/redevelopment experience, Mr. Jones has specialization certification in the post-legal courses of personal and corporate taxation as well as corporate mergers and acquisitions.

Professional Societies:

Los Angeles County Bar Association (Real Estate and Taxation Divisions)
State Bar of California
American Bar Association
National Bar Association
Langston Bar Association

Attachment D

GUSTAVO LAMANNA

Education:

- J. Reuben Clark Law School, Brigham Young University -- JD, December 2002 where he was a Dean's Fellow and recipient of the Distinguished Service Award and Merit Scholarship
- University of California, Berkeley -- AB, magna cum laude in Film Studies, May 1992

Professional Experience:

Mr. Lamanna is an associate of Kane, Ballmer & Berkman and joined the firm in May 2005. He has been involved in various aspects of redevelopment law transactions and litigation, including assisting in a contentious recall election action involving a 3,000+ acre redevelopment project, served as the front-line attorney for Public Records Act requests during a contentious election period for a downtown metropolitan redevelopment agency, and drafted and appeared as agency counsel in eminent domain and real estate litigation involving firm clients. He has participated in the private sector of the commercial and residential real estate industry since 1986. Before joining the Firm, Mr. Lamanna represented a group of investors and brokerage clients with the acquisition, management and disposition of commercial, industrial, residential and retail real estate assets. Prior to law school, he assisted attorneys as a certified legal assistant representing institutional lenders in the origination and syndication of over \$500 million in commercial real estate loans primarily on high-rise office and residential properties as well as retail, industrial and mixed-use developments. During law school, he served as an extern for California Court of Appeal, United States District Court, and one of the nation's largest title insurers, where he finalized underwriting title insurance policies for large retail chain stores and industrial power plant developments; he also served as a law clerk to an institutional real estate owner with a portfolio of South Pacific properties requiring acquisition and disposition analysis for ongoing management. In addition to real estate experience, he grew up working in and running small family retail businesses including a food manufacturing enterprise serving the diverse Spanish-language communities of Los Angeles. Mr. Lamanna previously resided in a mobile home park, served on resident committees, and was later invited to join that city's municipal rent stabilization board, which he had to decline because he moved from the mobile home park upon entry into law school

Mr. Lamanna volunteers his time with judges, lawyers and professors teaching bar review for students of color and progressive students at the Pro Bono Bar Review Program—started three decades ago by the Honorable Robert M. Takasugi, United States District Court Judge for the Central District of California. Mr. Lamanna has also served as pro bono trial counsel assisting low-income non-English-speaking tenants facing wrongful evictions in privately-owned rent-control properties. In Spring 2009, Mr. Lamanna, along with senior counsel Mr. Donald Johnson, taught Community Redevelopment Law at the UCLA School of Law. Gus, his wife and their daughter reside in Westwood.

Affiliations:

- California State Bar, admitted June, 2004
 Member of Litigation, Public and Real Property Law Sections
- American Bar Association
 Member of Affordable Housing, Government & Public, Litigation and Real Property Divisions
- Los Angeles County Bar Association

Attachment E

FIRM RESUME

Kane, Ballmer & Berkman is an AV-rated law firm with 14 attorneys and support staff. Since its inception in 1963, the firm has been based in the City of Los Angeles and specialized in providing legal services to municipalities, former redevelopment agencies, development commissions, special districts, and other public entities within and outside the State of California. In connection with this practice, the firm has provided legal services in related substantive fields of public agency defense in tort and negligence, as well as general and business counseling and complex case management.

The firm has a breadth of experience in complex legal matters involving public entities, including municipal operations, municipal contract, tort defense, public contract disputes, as well as business, finance and lease negotiations and contract advice; our practice also includes the varied intersections of real estate law, including military base conversions, environmental procedures and determinations (CEQA and NEPA), hazardous waste litigation and remediation, land use and general real estate development and finance, the negotiation and drafting of development agreements, assessment district creation, surety bonds and public works, municipal bonds, securitization programs, property taxation and assessments, affordable and market-rate housing, eminent domain, general municipal and trial and appellate litigation relating to these subjects.

The firm currently represents more than three dozen public entities, mostly former redevelopment agencies and cities located in California. A sample of current active clients of the firm is: Culver City, Glendale, Huntington Beach, Imperial Beach, Inglewood, Los Angeles, Ojai, Ontario, Oxnard, Palmdale, Pasadena, Redondo Beach, San Diego, San Jose, Santa Monica and South Pasadena. The firm also represents the Oversight Board for Solana Beach in San Diego County. The firm also represents private clients (generally property owners and/or developers) with redevelopment and related matters in cities that are not clients of the firm. Since 1963, the firm has represented over eighty public entities.

Our legal experience was gained by advocating on behalf of municipal clients for over 48 years against private interests that often outnumber and overspend our public clients. We are proud to have stood side-by-side well-heeled adverse counsel and interests. We earned a reputation as a firm known for its expert, ethical, efficient and effective special counsel for our public entity clients. Few firms have the experience as special counsel with such a high volume of contentious public development projects. Far fewer firms are able to almost exclusively limit their practice to the representation of public entities.

It is the firm's overriding objective to assist and provide each of its clients with the level of activism most appropriate and useful to the client in order for that client to accomplish its myriad goals and objectives. This is accomplished by drawing upon the diverse and varied experiences of the attorneys of the firm. The firm prides itself on training its attorneys to become partners and leaders in the field of municipal law. Many of our attorneys have dedicated their law practice exclusively to public law, achieved noteworthy degrees in addition to their law degree, including urban economics and a West Point graduate with Captain-rank in United States Military Police having served in Guantanamo and Seoul. Many of our attorneys began their careers as part of city attorney offices, staff of public agencies, and judicial externs for trial and appellate courts.

Furthermore, our attorneys have served in the capacity of planning commissioners, general counsel for public agencies, interim corporate counsel for non-profit corporations operated by public entities, and even the former Chief Operating Officer of the former Community Redevelopment Agency of the City of Los Angeles. Our attorneys have also taught Community Redevelopment Law to law students at the UCLA School of Law and provide pro bono services with judges and law professors. Opinions of our attorneys have been relied upon by our appellate courts. Many are sought for speaking engagements with municipal associations. Our founder, Eugene Jacobs, and name-principal, Murray Kane, have been honored with the prestigious Lifetime Achievement Awards by the California Redevelopment Association for their lifelong dedication to municipal redevelopment law. Most of all, our attorney-team is comprised of diverse down-to-earth individuals who are active members of the communities we serve.

Incident to our varied representation of public agencies over the last five decades, Kane, Ballmer & Berkman has gained a unique expertise tort and negligence litigation, general and business counseling and complex case management. As our clients trust our firm with some of the most important legal matters, their attorneys, public officials, and senior staff have sought out our legal advice matters where we have provided tort defense as well as prosecution for false claims; we have also regularly advised numerous public clients on general legal and business matters on an ongoing and regular practice incident to one of our core practice areas of redevelopment. In fact, our firm has acted as general counsel to the former Community Redevelopment Agency for the City of Los Angeles and currently serves as general counsel for the former Culver City Redevelopment Agency.

In connection with redevelopment dissolution, our firm's advice is sought after by cities, successor agencies, and oversight boards. We serve as counsel to various successor agencies as well as independent counsel for the Oversight Board for Solana Beach Redevelopment Agency.

In these capacities, we have regularly provided legal advice in the litigation categories of tort and negligence, general and business and complex case management, and municipal ethics. Our advice is sought on a weekly basis by numerous clients, particularly those negotiating against the County of Los Angeles in numerous proprietary matters. Our experience in complex case management has been derived from our representation of municipal clients in numerous settings involving election contests, false claims act prosecution, redevelopment and the numerous challenges arising under public law. We have been fortunate to be part of numerous published opinions in the California and Federal Courts.

As a result of our varied legal experience as municipal lawyers and size, our firm has been consistently sought by numerous public clients in some of the most complex legal matters for numerous California communities like the implementation of land use and redevelopment plans, including: zoning; general and community plans; subdivision and tentative mapping; the property and sales tax system; the conceptual and practical aspects of tax increment financing and the sharing of property tax by law or agreement among public entities; the methods of obtaining developer advances and payments for governmental purposes; bond or assessment districts and various other financial alternatives available for capital outlays; and real estate debt and equity financing and security. While the firm does not act as bond counsel, *per se*, we have acted as special counsel for many public bodies with direct involvement in formulating plans and the essential structure and

terms for bond issues. In this capacity we have been responsible for coordinating the issuance of bonds with the overall objectives of a redevelopment plan. The firm has assisted agencies when they issue tax allocation bonds, certificates of participation, lease revenue bonds, mortgage revenue bonds and Qualified Redevelopment Bonds. This expertise is sought out by many clients and will likely be key for any Oversight Board.

The firm also has broad expertise in environmental law including state and federal hazardous waste/toxic material liability, risk programs, and remediation guidelines. Our understanding of the Polanco Redevelopment Act and related advocacy has assisted our client's in applications to the Department of Toxic Substance Control Orphan Share Trust Fund. Moreover, the firm has substantial experience in handling environmental matters involving CEQA which serves to protect the California environment through the utilization of certain environmental assessment measures.

The firm has experience in the Neighborhood Stabilization Programs and negotiation of contracts on behalf of local public entities adverse to major financial institutions. In addition, whether assisting clients in voluntary or involuntary property acquisitions, our firm has substantial experience in securing the most appropriate title insurance for our client's property acquisition project. We also regularly negotiate on behalf of municipal government against counties and the federal government in numerous contractual matters and disputes.

The firm's litigation practice coordinates directly with and facilitates the transactional activities of our clients. In the area of eminent domain, the firm has been able to successfully bring its expertise to bear on various condemnation and calculation issues peculiar to municipal projects. The same is true for the land use, municipal, and environmental matters handled by the firm. In litigation, the firm takes a flexible and pragmatic approach to solving clients' problems. The firm has handled complex and precedent setting issues at both the trial and appellate levels of advocacy.

Over the last five decades, our firm has maintained the size of its professional team assigned to our public clients at the optimal level to provide for rapid, efficient, and effective ethical advocacy for their respective communities. Often times our clients seek our attorneys on a 24/7 basis. In fact, our clients often seek our firm to take over litigation when the litigation can no longer be managed internally by their City Attorney Offices or outside counsel. Given our reliability and five decades of work in municipal level legal services, our firm has gained a reputation as the premier municipal law firm in complex and contested legal matters. We have been sought as interim counsel on numerous occasions for our ability to step in on a moments notice. As a result, our attorneys are sought for legal and speaking engagements throughout the state by lawyers, judges, bar associations, law schools, and state-wide public agency associations.

In connection with the scope of work sought in this request for proposals, our attorneys are accustomed to complicated engagements and our services, include, but are not limited to:

- (a) Gathering initial information concerning a negotiation or new legal action;
- (b) Conducting non-deposition discovery, including but not limited to in-person interview, or online and/or investigative services;
- (c) Conducting depositions either locally or in the most efficient method nationally, as and if deemed appropriate;

- (d) Conducting legal research, investigating case facts (including pretrial discovery) and preparing motions;
- (e) Preparing and filing legal documents (including any and all pleadings and briefs legally justified);
- (f) Making appearances and oral arguments before State and Federal Courts;
- (g) Participating in one or more trials before State and Federal Courts;
- (h) Handling post-trial proceedings, as and when justified and appropriate, including post-trial settlement negotiations;
- (i) Handling appeals from adverse judgments, as and if appropriate;
- (j) Assisting with the development of defense strategy on complex cases;
- (k) Conducting peer review on complex cases to ensure appropriate legal representation;
- (l) Coordinating the defense strategies of multiple attorneys on multi-venue cases; and
- (m) Advising management on settlement offers and strategies and providing evaluations of the settlement options and bargaining strategies.

Attachment F

PROPOSED SCHEDULE OF HOURLY RATES

PUBLIC RATE SUMMARY

Camian Deinainal	\$250/hour
Senior Principal	
Principal	\$250/hour
Senior Counsel	\$225/hour
Of Counsel	\$225/hour
Senior Associate	\$225/hour
Associate (Senior Experience)	\$205/hour
Associate	\$160/hour
Paralegal	\$ 85/hour
Legal Assistant	\$ 65/hour

CLASSIFICATION OF ATTORNEYS AND OTHER PROFESSIONALS

Name	<u>Status</u>	Billable Rate
Murray O. Kane	Senior Principal (Partner)	\$250/hour
Royce K. Jones	Senior Principal (Partner)	\$250/hour
Susan Y. Apy	Principal (Partner)	\$250/hour
Bruce Gridley	Senior Counsel	\$225/hour
Deborah Rhoads	Senior Counsel	\$225/hour
Donald P. Johnson	Of Counsel	\$225/hour
Glenn Wasserman	Of Counsel	\$225/hour
Kendall Berkey	Senior Associate	\$225/hour
Todd Mooney	Senior Associate	\$225/hour
Guillermo Frias	Associate (Senior Experience)	\$205/hour
Theodore Ballmer	Associate	\$160/hour
Jhaila Brown	Associate	\$160/hour
Edward Kang	Associate	\$160/hour
Gustavo Lamanna	Associate	\$160/hour

Travel, subsistence, and other out-of pocket expenses authorized in connection with the performance of duties under the agreement would include, along with any other such authorized expenses:

- a. The amount of the actual cost of coach class transportation by common carrier or at the per mile rate established by the IRS, if travel is performed by privately-owned vehicle;
- b. Reasonable subsistence expenses, supported by detailed records in the amount of actual costs;
- c. Taxi fares, long distance telephone calls, and similar expenditures in the amount of the actual cost;
- d. Duplication costs for all copies at cost of twenty-five (25) cents per page, and facsimile costs at one dollar (1.00) per page; and
- e. Fees and costs incurred by the firm in engaging consultants and experts approved by the client.

The firm shall not be reimbursed for secretarial or typist services for normal office operating expense, with the exception of word processing fees, but only if noted in the rate schedule. The firm shall be reimbursed for actual litigation costs, fees and expenses, such as filing fees, expert witness fees, charges for service of process and costs of investigation.

Attachment G

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT FOR LEGAL SERVICES (this "Agreement"), entered into this day of April, 2012, by and between the CITY OF MONTEBELLO, a municipal corporation (hereinafter referred to as the "City") and KANE, BALLMER & BERKMAN, a Law Corporation, authorized to practice law in California and with principal offices in the City of Los Angeles, California (hereinafter referred to as "Special Counsel").

WITNESSETH

WHEREAS, City desires to engage the services of Special Counsel for legal services pursuant to the terms of this Agreement.

NOW, THEREFORE, the parties hereto do hereby mutually agree as follows:

1. SCOPE OF SERVICES

Special Counsel agrees to render legal services to City when and as requested by City. Services to be performed by Special Counsel under this Agreement may include, but are not limited to the rendering of legal advice, initially in connection with the obligations imposed by Part 1.85 of Assembly Bill No. 26 (1st Ex. Sess.) as set forth in California Health & Safety Code sections 34170 through 34191, and as needed thereafter in connection therewith (the "Project"). The services include consultation pertaining to interpretation, application and enforcement of the California law applicable to the Project as well as: furnishing of written legal opinions; drafting and preparation of necessary legal contracts and documents; legal review and approval of contracts and documents; attendance at local hearings or other meetings as required; and litigation services; all as requested by City.

2. COMPENSATION

Special Counsel shall be compensated for services rendered under this Agreement in accordance with the schedule attached hereto as Exhibit A and incorporated herein by this reference. The schedule attached as Exhibit A may be revised from time to time by Special Counsel conditioned upon City's written consent, upon thirty (30) days' written notice to City, consistent with Special Counsel's prevailing rates. Travel, subsistence and other out-of-pocket expenses authorized by City in connection with the performance of duties under this Agreement shall be reimbursed as provided in Exhibit A.

3. **METHOD OF PAYMENT**

Special Counsel shall, within ten (10) days after the first of each calendar month, submit a statement to City containing a breakdown of services performed during the preceding month, specifying the services performed, dates and number of hours, itemization of travel, subsistence and other expenses related thereto. Payment shall be due within thirty (30) days thereafter.

4. **RIGHT OF TERMINATION**

This Agreement may be terminated at any time by either party hereto on written notice to the other.

5. **NOTIFICATION OF CHANGE IN FORM**

Special Counsel reserves the right to effect changes in form, including, but not limited to: the change in form from a professional corporation to a partnership; the change in form of any partner or partners from an individual or individuals to a professional law corporation; the change in form of any corporate partner or partners to individual partners. City shall be promptly notified in writing of any change in form.

6. PRINCIPALS AND EMPLOYEES

The parties agree that Murray Kane and Gustavo Lamanna are "key personnel" for the purpose of this Agreement. Key personnel will be available to the extent proposed for the duration of the services to be provided in this Agreement. No person designated as key personnel in this Agreement shall be removed or replaced without the prior written concurrence of the City. Notwithstanding the forgoing, the addition of new principals or the departure of existing principals not identified as key personnel shall not effect a termination of this Agreement. Subject to the provision concerning key personnel above, Special Counsel reserves the right to add, substitute or delete principals, partners, associates and employees in carrying out its services under this Agreement.

This Agreement shall be binding upon City and Special Counsel and their successors, executors, administrators and assigns with respect to all of the covenants and conditions set forth above.

7. **RELATIONSHIP OF THE PARTIES**

Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto other than attorney and client according to the provisions contained herein, or cause City to be responsible in any way for the debts or obligations of Special Counsel, or any other party.

IN WITNESS THEREOF, City and Special Counsel have executed this Agreement as of the date first hereinabove set forth.

TAND DATIMED & DEDIMANI

CITY OF MONTEBELLO	KANE BALLIVIER & BERRIVIAN
By:	By:
Name:	Name:
Its:	Its:

EXHIBIT A

A0 M
\$250/hour
\$250/hour
\$225/hour
\$225/hour
\$225/hour
) \$205/hour
\$160/hour
\$ 85/hour
\$ 65/hour

CLASSIFICATION OF ATTORNEYS AND OTHER PROFESSIONALS

Name	<u>Status</u>	Billable Rate
Murray O. Kane	Senior Principal (Partner)	\$250/hour
Royce K. Jones	Senior Principal (Partner)	\$250/hour
Susan Y. Apy	Principal (Partner)	\$250/hour
Bruce Gridley	Senior Counsel	\$225/hour
Deborah Rhoads	Senior Counsel	\$225/hour
Donald P. Johnson	Of Counsel	\$225/hour
Glenn Wasserman	Of Counsel	\$225/hour
Kendall Berkey	Senior Associate	\$225/hour
Todd Mooney	Senior Associate	\$225/hour
Guillermo Frias	Associate (Senior Experience)	\$205/hour
Theodore Ballmer	Associate	\$160/hour
Jhaila Brown	Associate	\$160/hour
Edward Kang	Associate	\$160/hour
Gustavo Lamanna	Associate	\$160/hour

Travel, subsistence, and other out-of pocket expenses authorized in connection with the performance of duties under the agreement would include, along with any other such authorized expenses:

- a. The amount of the actual cost of coach class transportation by common carrier or at the per mile rate established by the IRS, if travel is performed by privately-owned vehicle;
- b. Reasonable subsistence expenses, supported by detailed records in the amount of actual costs:
- c. Taxi fares, long distance telephone calls, and similar expenditures in the amount of the actual cost:
- d. Duplication costs for all copies at cost of twenty-five (25) cents per page, and facsimile costs at one dollar (1.00) per page; and
- e. Fees and costs incurred by the firm in engaging consultants and experts approved by the client.

The firm shall not be reimbursed for secretarial or typist services for normal office operating expense, with the exception of word processing fees, but only if noted in the rate schedule. The firm shall be reimbursed for actual litigation costs, fees and expenses, such as filing fees, expert witness fees, charges for service of process and costs of investigation.

523 West Sixth Street, Suite 1220 Los Angeles, California 90014

213 627-6336

M David Kroot

April 27, 2012

John T. Nagle

Polly V. Marshall

Lynn Hutchins

Karen M. Tiedemann

Thomas H. Webber Montebello, CA 90640

John T. Haygood

Dianne Jackson McLean

Michelle D. Brewer

Jennifer K. Bell

Robert C. Mills

Isabel L. Brown

James T. Diamond, Jr.

Margaret F. Jung

Heather J. Gould

Juliet E. Cox

William F. DiCamillo

Amy DeVaudreuil

Barbara E. Kautz

Erica Williams Orcharton

Luis A. Rodriguez

Xochitl Carrion

Rafael Yaquian

Josh Mukhopadhyay

Vincent L. Brown

VIA OVERNIGHT MAIL

Michael Huntley

Planning and Community Development Director

1600 W. Beverly Blvd.

Re: Proposal for Oversight Board Legal Counsel

Dear Mr. Huntley:

Goldfarb & Lipman LLP is pleased to submit this proposal to act as legal counsel to the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Montebello (the "Oversight Board"). Our firm has been an integral part of the redevelopment and affordable housing community's understanding of the implications of ABx1 26. The attorneys in our firm have written and spoken extensively about the impact caused by the dissolution of redevelopment agencies. We currently represent over 40 entities in their capacity as successor agencies. Based on our experience representing public agencies and our knowledge of ABx1 26, Goldfarb & Lipman LLP is ideally suited to represent the Oversight Board.

I would have the primary responsibility for representing the Oversight Board, with assistance from Lynn Hutchins, as needed.

Enclosed is a copy of our proposal, which includes our hourly rates, my resume and that of Ms. Hutchins. Also enclosed are the law alerts that our firm has written in connection with ABx1 26.

Feel free to contact me with any questions or if you would like additional information.

Very truly yours,

San Francisco

415 788-6336

Oakland

THOMAS H. WEBBER

510 836-6336

San Diego

619 239-6336

Goldfarb & Lipman LLP



Shipment Receipt Address Information

Ship to: Ship from:

Michael Huntley Thomas H. Webber
City of Montebello Goldfarb & Lipman LLP
Planning & Comm. 523 West Sixth Street, Suite

Development Dir. 1220

1600 W. Beverly Blvd.

Montebello, CA Los Angeles, CA

90640 90014 US US

(323) 887-1403 213-627-6366

Shipping Information

Tracking number: 798338219780

Ship date: 04/27/2012

Estimated shipping charges: 8.86

Package Information

Service type: Priority Overnight

Package type: FedEx Pak Number of packages: 1 Total weight: 1.50LBS Declared value: 0.00USD

Special Services:

Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information

Bill transportation to: G&L-385 Your reference: Proposal

P.O. no.: Invoice no.:

Department no.: RR

Thank you for shipping online with Fedex ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.

The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

523 West Sixth Street, Suite 1220 Los Angeles, CA 90014 213.627.6336

1300 Clay Street, 11th Floor City Center Plaza Oakland, CA 94612 510.836.6336

2260 El Cajon Boulevard, No. 922 San Diego, CA 92104 619.239.6336

Goldfarb & Lipman LLP
WWW.GOLDFARBLIPMAN.COM

Goldfarb & Lipman LLP is a California law firm with special strengths in community economic development, real estate, affordable housing, and municipal law. During the existence of redevelopment, we represented numerous redevelopment and other public agencies with active projects and programs, providing day-to-day advice on the requirements of the Community Redevelopment Law. We currently represent over 40 successor agencies.

OVERSIGHT BOARD COUNSEL QUALIFICATIONS

Since the California Supreme Court's December 2011 decision in *Community Redevelopment Ass'n v. Montosantos*, we have taken a leading role in interpreting and implementing the provisions of ABx1 26, the statute dissolving redevelopment agencies. These have included:

- Preparing numerous Law Alerts explaining the provisions of ABx1 26 and providing practical advice for clients, such as preparation of Enforceable Obligation Payments Schedules (EOPS), Recognized Obligation Payment Schedules (ROPS), and administrative budgets. They have served as a major source of legal and policy guidance on the implementation of ABx1 26.
- Drafting and maintaining for our clients a library of resolutions, staff reports, sample EOPS and ROPS, sample administrative budgets, exit memos, Oversight Board agendas and introductory material, and numerous other documents required during the dissolution process.
- Providing for our clients ongoing advice on interactions with the Department of Finance (DOF), State Controller's Office (SCO), County Auditor-Controllers, and Oversight Boards.
- Completing research for our clients, as requested, in regard to potential litigation related to enforceable obligations and interpretations of the DOF, SCO, and County Auditor-Controllers.
- Serving on the Community Redevelopment Association's Technical Committee and subcommittees and the League of California Cities' Post-Redevelopment Working Group and subcommittees. Our participation in these groups has allowed us to monitor and influence the general consensus of practitioners regarding interpretations of ABx1 26 and to obtain advance knowledge of positions taken by the DOF, SCO, and County Auditor-Controllers.
- Presenting information regarding ABx1 26 at numerous conferences and seminars, including California Society of Municipal Finance Officers, International Council of Shopping Centers, Silicon Valley Community Foundation, Bay Area League of Women Voters, Housing California, and Nonprofit Housing Association of Northern California. Goldfarb & Lipman attorneys, including Thomas Webber and Lynn Hutchins, participated in many of the panels at the Community Redevelopment Association's recent Successor Agency trainings.

CLIENTS

We currently provide representation to the following entities in their capacity as successor agencies to their former redevelopment agencies:

City of Antioch	City of Livermore	City of Stockton
City of Brisbane	City of Marina	City of Sunnyvale
City of Campbell	City of Menlo Park	City of Tracy
City of Capitola	City of Milpitas	City of Vacaville
City of Clayton	City of Monterey	City of Watsonville
City of Citrus Heights	City of Morgan Hill	County of Alameda
City of Cupertino	City of Pittsburg	County of Contra Costa
City of Del Rey Oaks	City of Richmond	County of Mendocino
City of East Palo Alto	City of Salinas	County of Monterey
City of Eureka	City of San Rafael	County of Orange
City of El Cerrito	City of Santa Clara	County of Sonoma
City of Fremont	City of Seaside	Town of Danville
City of Hayward	City of Simi Valley	Town of Los Gatos
City of Hercules	City of Solana Beach	CRA/LA, a designated local
City of Hollister		authority

We also represent the County-Auditor-Controller of the County of Napa with regard to redevelopment agency dissolution issues. As firm policy, we decided soon after the decision in *Community Redevelopment Ass'n v. Montosantos* to represent only those Oversight Boards located in areas where we are unlikely to have potential conflicts in our role as counsel to successor agencies. For that reason, we do not currently represent any Oversight Boards. However, in our role as counsel to successor agencies, we frequently attend Oversight Board meetings and have advised on the formation of the Oversight Boards, conduct of Oversight Board meetings, conflict rules applicable to Oversight Board members and the legal role of the Oversight Boards.

We have extensive experience representing public agencies in Southern California. Agencies we represent include the Cities of Los Angeles, Vista, Solana Beach, Carlsbad and Simi Valley. For 20 years, we represented the Community Redevelopment Agency of the City of Los Angeles on numerous development projects involving acquisition and relocation issues, including Staples Center and LA Live, Marlton Square, Hollywood & Vine and the Grand Avenue Development. Mr. Webber worked extensively with the City Attorney's Office and with City staff in documenting and implementing the CRA's projects. He worked with the CRA on housing, economic development, and redevelopment issues, including financing, leasing arrangements, loan agreements, and DDAs, among others.

ATTORNEYS

Thomas Webber, a partner in the firm, would be the primary attorney representing the Oversight Board for the Redevelopment Agency of the City of Montebello, with assistance as needed from Lynn Hutchins. Resumes for Thomas Webber and Lynn Hutchins are included with this proposal.

BILLING RATES

Partners	\$265-275
Associates	\$185-245
Senior Law Clerks	\$140
Law Clerks	\$125
Project Coordinators	\$125

Goldfarb & Lipman does not charge for word processing services. Reimbursable expenses that will be billed at cost by Goldfarb & Lipman include, but are not limited to: application, filing and similar fees required by third parties; delivery charges other than by first class United States mail; conference calls via third-party conference call services; and travel expenses.

RELATED PRACTICE AREAS

MUNICIPAL LAW

Goldfarb & Lipman has extensive experience on a variety of general municipal law matters relevant to Oversight Boards.

We provide experienced counsel to our public clients on the statutory requirements affecting public agencies, including the Brown Act, Public Records Act, noticing, compliance with the Fair Political Practices Act and on issues relating to due process. Goldfarb & Lipman attorneys regularly provide advice to clients on agenda noticing requirements, proper matters for closed sessions and related issues under the Brown Act. We have extensive experience with the Public Records Act, including review of client documents in response to public record act requests and defense of clients in litigation challenging compliance with the Public Records Act.

LITIGATION

We have extensive trial and appellate litigation experience in a variety of areas including eminent domain, contract disputes, CEQA challenges, inverse condemnation actions, property tax allocation disputes, civil rights and discrimination actions, real estate and real estate secured transactions, bankruptcy issues, construction disputes and employment contract and wrongful termination disputes. We have handled litigation under the Ralph M. Brown Act, the Political Reform Act, Government Code section 1090, prevailing wage law, and the Public Records Act. We also represent clients in matters regarding the statutory and constitutional validity of taxes and fees.

Goldfarb & Lipman has participated in significant litigation under the Community Redevelopment Law. We have litigated questions relating to the procedures and standards for adopting and amending redevelopment plans, to the proper allocation and distribution of property tax revenue, and to the conflict of interest rules in the Community Redevelopment Law.

Goldfarb & Lipman attorneys have experience litigating all significant issues in condemnation, including right-to-take disputes, CEQA challenges, alleged conflicts of interest, problems under the Ralph M. Brown Act and similar open-meeting laws, bankruptcy proceedings, and complex valuation issues both for real property and for business goodwill. With our litigation experience, Goldfarb & Lipman provides our clients with an honest assessment so they have a realistic understanding of the potential cost, in both money and time, of acquiring property. Our broad range of experience enables us to assist our clients in all issues preceding or accompanying litigation, and has resulted in significant published opinions.

RESUMES OF MR. WEBBER AND MS. HUTCHINS

THOMAS H. WEBBER

twebber@goldfarblipman.com

Los Angeles 213 627-6336

Oakland 510 836-6336

San Diego 619 239-6336

goldfarblipman.com

Mr. Webber is a partner in the firm with an emphasis of practice in community economic development, affordable housing, real estate, nonprofit and municipal law.

Mr. Webber represents public agencies and nonprofit housing development corporations on real estate and economic development issues, including financing, leasing arrangements, loan agreements, and acquisition agreements. Mr. Webber's work in this area involves structuring complex development transactions involving public and private partnerships, advising clients on public and private financing structures and all aspects of development issues, including CEQA related and real property security issues. Mr. Webber has also advised public clients on Brown Act and Public Records Act issues. He is a co-author of *A Legal Guide to California Redevelopment* (Third Edition).

Mr. Webber represented the Community Redevelopment Agency of the City of Los Angeles on various aspects in the development of Staples Center, the Marriott Convention Center Hotel, and the new Broad Museum. Mr. Webber is currently representing the City of Santa Clara in the development of the new stadium to be the home of the San Francisco 49ers.

Mr. Webber also works with a wide variety of nonprofit entities, including school districts, affordable housing developers, and other charitable organizations providing legal guidance regarding nonprofit operations and administration, tax issues, as well as matters related to property and real estate, and other corporate and organizational matters.

Goldfarb & Lipman, LLP, Los Angeles, California, 1992-present.

Assistant to the City Attorney, Office of City Attorney, City of Oakland. 1987-1992.

Analyst, Office of Economic Development & Employment, City of Oakland. 1979-1987.

Professional Experience

Education J.D., Golden Gate University School of Law, San

Francisco, 1984.

B.A., Sociology and Legal Studies, University of Massachusetts at Amherst, 1976.

Professional & Volunteer Affiliations

Member, Real Property Section, California State Bar

Association.

LYNN HUTCHINS

lhutchins@goldfarblipman.com

Los Angeles 213 627-6336

Oakland 510 836-6336

San Diego 619 239-6336

goldfarblipman.com

Professional Experience

Education

Professional & Volunteer Affiliations

Ms. Hutchins is a partner at Goldfarb & Lipman practicing in the areas of community economic development, affordable housing, environmental law, prevailing wages and real estate finance.

Ms. Hutchins advises public agencies on community economic development techniques and programs, land acquisition, land disposition and developer and business assistance issues. She has structured and negotiated numerous transactions between public agencies and housing and commercial developers involving disposition and development agreements, owner participation agreements, ground leases and related documents. She frequently advises and lectures on labor issues related to community development and housing projects.

Ms. Hutchins advises numerous nonprofits and public agencies on the development, financing and management of workforce housing projects and programs. She has represented many housing developers in all phases of the development process, including formation of special-purpose entities, acquisition of property, closing loans, advice relating to hazardous materials issues, land use permits, and advice pertaining to the syndication of housing projects, particularly securities issues. She frequently advises nonprofit housing developers regarding affordable housing program requirements.

She is a co-author of *A Legal Guide to California Redevelopment* (Third Edition).

Goldfarb & Lipman LLP, Oakland, California, 1984 – present.

J.D., King Hall School of Law, University of California, Davis, with Order of Coif honors, 1984.

A.B., Human Biology, Stanford University, 1980.

Board of Directors, California Housing Consortium. Member, American Bar Association, Forum on Affordable Housing & Community Development Law. Member, Non-Profit Housing Association of Northern California.

RESUMES OF OTHER GOLDFARB & LIPMAN ATTORNEYS

M DAVID KROOT

Education: B.A., University of Michigan, honors program in Economics. J.D., University of Chicago Law School. **Previous Employment**: Chief Housing Attorney, U.S. Department of Housing and Urban Development (HUD), Office of Area Counsel, San Francisco, California. **Professional and Volunteer Affiliations**: State Bar of California. American Bar Association. Member, Forum on Affordable Housing & Community Development Law of American Bar Association. San Francisco Planning & Urban Research Association.

JOHN T. NAGLE

Education: B.A., University of Notre Dame, Highest Honors. Masters in City Planning, University of Pennsylvania. HUD Fellow. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. Previous Employment: City of Oakland, Office of Economic Development and Employment. City of Philadelphia, Planning Commission, Chief of Economic Development Planning. Professional & Volunteer Affiliations: State Bar of California. Member, California Transportation Commission Real Estate Advisory Panel. Member, Lambda Alpha International (international real estate honor society). Lecturer on Redevelopment and Real Estate matters, University of California Berkeley Extension Program.

POLLY V. MARSHALL

Education: B.A. in Biology and in Politics, University of California, Santa Cruz, honors. J.D., Boalt Hall School of Law, University of California, Berkeley. **Professional and Volunteer Affiliations**: State Bar of California. Member and past president, San Francisco Rent Stabilization and Arbitration Board. Member, Queen's Bench.

KAREN M. TIEDEMANN

Education: A.B., University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. Associate Editor, Ecology Law Quarterly. Masters in City Planning, University of California, Berkeley. **Professional & Volunteer Affiliations**: State Bar of California.

JOHN T. HAYGOOD

Education: B.A., Stanford University. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment**: Senior Tax Counsel, Kaiser Aluminum and Chemical Corporation. **Professional and Volunteer Affiliations**: Member, Executive Committee of the Taxation Section of the State Bar of California. Charles Houston Bar Association.

DIANNE JACKSON MCLEAN

Education: A.B., University of California, Berkeley. Masters in City Planning, University of California, Berkeley. J.D., Hastings College of the Law. Previous Employment: Community Development Block Grant Coordinator and Associate Planner, Department of Community Development, City of Daly City. Associate Planner, Planning Department, City of Sacramento. City Planner, City of Emeryville Redevelopment Agency. Professional & Volunteer Affiliations: State Bar of California. Member, Charles Houston Bar Association. Member, Alameda County Bar Association. Member, American Bar Association. Member, Cesar Chavez Middle School Site Council. Board of Directors, California Association of Black Lawyers. Board of Directors of Kidango (Children Centers).

MICHELLE D. BREWER

Education: B.A., Harvard University, honors. Masters in Public Affairs, Princeton University. J.D., Harvard University Law School. **Previous Employment**: Deputy City Attorney, City and County of San Francisco. **Professional & Volunteer Affiliations**: State Bar of California. Member, Real Property Law Section of the State Bar of California. American Bar Association. Member, Forum on Affordable Housing and Community Development Law. Former Board Member, East Oakland Youth Development Center. Former Member, San Francisco Bar Association Committee on Minority Employment.

JENNIFER K. BELL

Education: B.A., Wellesley College, honors. J.D., Harvard University Law School. **Previous Employment:** Deputy General Counsel, San Francisco Redevelopment Agency. Deputy City Attorney, City of Oakland. Attorney, U.S. Department of Housing and Urban Development. Staff Attorney, Legal Aid Society of Alameda County. **Professional & Volunteer Affiliations:** State Bar of California, Real Property Law Section. Black Women Lawyers of Northern California. Former Board Member, Merritt Community Capital Corporation and the Low Income Housing Fund.

ROBERT C. MILLS

Education: B.A., California State University, Northridge, *cum laude*. J.D., Hastings College of the Law. Associate Articles Editor, Communications and Entertainment Law Journal. **Previous Employment:** Staff Attorney, U.S. Department of Housing & Urban Development, Office of Counsel. **Professional & Volunteer Affiliations:** State Bar of California. Member, Non-Profit Housing Association of Northern California.

ISABEL L. BROWN

Education: B.S.E. in Civil Engineering and Certificate in Architecture, Princeton University, *cum laude*. Masters degree in Architecture, University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley. Articles Editor, Ecology Law Quarterly. Sadie & Alvin Landis Prize in Local Government Law. **Previous Employment**: Legislative Assistant, U.S. House of Representatives. Assistant Architect, City of New York, Department of Housing, Preservation & Development. **Professional & Volunteer Affiliations**: State Bar of California.

JAMES T. DIAMOND, JR.

Education: B.A., University of San Francisco, *cum laude*. J.D., Hastings College of the Law. **Professional & Volunteer Affiliations:** State Bar of California. Member, Employment Law Section, American Bar Association. Author, "Putting Former Employees in the Firing Line", San Francisco Daily Journal, February 16, 2000. Co-Author, "Inevitable Disclosure: Employee Mobility and Trade Secrets", Minnesota Bench and Bar, June 1997.

MARGARET F. JUNG

Education: A.B. in Business Economics, University of California, Los Angeles, *magna cum laude*, Phi Beta Kappa. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment**: Public Accountant, Ernst & Young, LLP. **Professional & Volunteer Affiliations**: State Bar of California. Certified Public Accountant (inactive).

HEATHER J. GOULD

Education: B.A., Carleton College, Northfield, Minnesota, *magna cum laude*. J.D., Boalt Hall School of Law, University of California, Berkeley. **Previous Employment**: State of Minnesota Attorney General's Office, Consumer Division, Tobacco Team, Legal Assistant. **Professional & Volunteer Affiliations**: State Bar of California. Officer, Board of Directors, Oakland's Citywide Community Land Trust, Inc.

JULIET E. COX

Education: B.A., Rice University, Houston, Texas, *summa cum laude*. M.S., University of California, Berkeley. J.D., Boalt Hall School of Law, University of California, Berkeley, Order of the Coif honors. **Previous Employment:** Briefing Attorney to the Honorable Harriet O'Neill, Supreme Court of Texas. **Professional and Volunteer Affiliations:** State Bar of California. Chief Financial Officer, Berkeley Law Foundation.

WILLIAM F. DICAMILLO

Education: B.A., State University of New York, Buffalo, *magna cum laude*. J.D., University of California, Los Angeles. **Previous Employment**: Travelers Aid Society of Alameda County, Case Manager. **Professional & Volunteer Affiliations**: State Bar of California.

AMY DeVAUDREUIL

Education: B.A., University of Rhode Island, Highest Honors, Phi Beta Kappa. J.D., Boalt Hall School of Law, University of California, Berkeley. California Law Review, Diversity Editor. **Professional and Volunteer Affiliations:** State Bar of California, Real Property and Taxation Sections. American Bar Association, Forum on Affordable Housing and Community Development. Co-President, Berkeley Law Foundation.

BARBARA E. KAUTZ

Education: B.A., *cum laude*, Phi Beta Kappa, Stanford University. Masters of City Planning, University of California, Berkeley. J.D., *summa cum laude*, University of San Francisco. U.S.F. Law Review Articles Editor. Author of *In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing*, 36 U.S.F. Law Review 971 (2002). Co-author, *Local Government Financing Powers and Sources of Funding*, ABA Legal Guide to Affordable Housing (2006). Previous Employment: Community Development Director & Assistant City Manager, City of San Mateo, California, 1986-2002. Planning Director, Town of Corte Madera, California, 1976-1986. Professional & Volunteer Affiliations: State Bar of California. American Bar Association, Section on State and Local Government. Fellow, American Institute of Certified Planners. Urban Land Institute. Association of Environmental Professionals.

ERICA WILLIAMS ORCHARTON

Education: B.A., Occidental College. J.D., University of Southern California Law School. **Previous Employment:** Affordable Housing Associates, Berkeley, CA, Director of Operations/Real Estate Project Manager. **Professional and Volunteer Affiliations:** State Bar of California. Political Asylum Project, Lawyers' Committee for Civil Rights, Pro bono Attorney.

LUIS A. RODRIGUEZ

Education: B.A., Sociology University of California, Los Angeles. M.A. Social Sciences, University of Chicago in 1998. J.D. from University of California, Los Angeles, School of Law. Recipient of the Drown Fellowship, Public Interest Law Fellowship, the UCLA Law Scholarship and the Managing Editor of the *Chicano-Latino Law Review*. **Previous Employment**: Staff Attorney, Economic Development Unit, Legal Aid Foundation of Los Angeles. **Professional & Volunteer Affiliations:** State Bar of California.

XOCHITL CARRION

Education: B.A., University of California, Los Angeles, Highest Honors. J.D., University of California, Hastings College of the Law. **Professional & Volunteer Affiliations:** State Bar of California. American Bar Association. Forum on Affordable Housing and Community Development Law. Hispanic National Bar Association. Immediate Past President, San Francisco La Raza Lawyers Bar Association. Bar Association of San Francisco. Latina Lawyers Bar Association. Vice Chair, California Law Revision Commission.

RAFAEL YAQUIAN

Education: B.S., Community and Regional Development, University of California, Davis. M.A., Urban Planning, University of California, Los Angeles. J.D., University of California, Los Angeles. **Professional & Volunteer Affiliations:** State Bar of California, Real Property and Taxation Sections. American Bar Association, Forum on Affordable Housing and Community Development. Member, Urban Land Institute.

JOSH MUKHOPADHYAY

Education: B.A./B.A., Yale University, with Distinction. M.P.P., University of California, Los Angeles School of Public Affairs, Highest Honors. J.D., University of California, Los Angeles School of Law, Epstein Program in Public Interest Law and Policy. **Professional & Volunteer Affiliations:** State Bar of California, Environmental Law Section. American Bar Association, Forum on Affordable Housing and Community Development. San Francisco Planning & Urban Research Association.

VINCENT L. BROWN

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JANUARY 5, 2012

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LAW ALERT

WHAT DOES THE DISSOLUTION OF REDEVELOPMENT AGENCIES MEAN FOR HOUSING AUTHORITIES?

On December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding ABx1 26 (the "Dissolution Act") constitutional and ABx1 27 (the "Alternative Redevelopment Program Act") unconstitutional.

The Court's bifurcated decision means that all California redevelopment agencies ("RDAs") will be dissolved under the constitutional Dissolution Act, and none will have the opportunity to opt into continued existence under the unconstitutional Alternative Redevelopment Program Act.

The Court also determined to push back the deadlines in the Dissolution Act arising prior to May 1, 2012 generally by four months. For instance, all RDAs will be dissolved and their successor agencies will begin to function on February 1, 2012 under the Court's decision (as opposed to the October 1, 2011 deadline specified in the Dissolution Act itself).

Below is a discussion of certain issues pursuant to the Dissolution Act which are specific to county and local housing authorities. For a detailed analysis regarding the court's decision and the Dissolution Act, please see our attached memo.

In regards to the non-housing aspects of redevelopment, unless a city or county that created the RDA ("Sponsoring Community") elects to not serve as the successor agency to a dissolving RDA by January 13, 2012 (next Friday), then the Sponsoring Community will be the successor agency. If the Sponsoring Community opts out, then it is a race among the taxing entities in the redevelopment project area to be the first to claim successor agency status.

The Sponsoring Community may also elect to become the successor housing agency. The Sponsoring Community has until January 31, 2012 to make the decision to be a successor housing agency. However, many Sponsoring Communities are likely to make that decision by January 13, 2012, the same date they will make the decision whether to become a successor agency.

If a Sponsoring Community decides <u>not</u> to become the successor housing agency, then the housing authority in the territorial jurisdiction of the former RDA, would become the successor housing agency. If there is more than one housing authority that operates in the territorial jurisdiction of a former RDA, for example a local city housing authority and county housing authority having the authority to operate in the same city, then the Sponsoring

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Community would be able to select which housing authority would be the successor housing agency. In this situation, the Sponsoring Community, the local housing authority, and the county housing authority may want to have preliminary discussions before the Sponsoring Community selects a particular entity to be the successor housing agency. Although the Dissolution Act language purports to make the designation of a housing authority as the successor housing agency a unilateral decision by the Sponsoring Community, there remain some open questions regarding whether a housing authority can be designated without its consent, as well as the meaning of operating within the territorial jurisdiction of the Sponsoring Community.

If there is no local housing authority in the territorial jurisdiction of the former RDA, then the Department of Housing and Community Development would become the successor housing agency for that RDA.

Certain cities that have formed a housing authority may want to have the county housing authority act as the successor housing agency rather than the local housing authority, and that could be accomplished by the city and the county housing authority entering into or amending an existing cooperation agreement that would appoint the county housing authority as the housing authority for the city.

It is important to note that even though a Sponsoring Community elects to become the successor housing agency, the Sponsoring Community might not have the resources to carry out the actual functions of the successor housing agency. In such a case, the county housing authority or the local housing authority could enter into a joint powers agreement or a contractual arrangement with the Sponsoring Community under which the county housing authority or the local housing authority would undertake the successor housing agency activities in accordance with standards set forth in the joint powers agreement or the contract.

Housing authorities that will be the successor housing agency will have to determine whether they have the resources to perform the housing related duties of the former RDA (such as monitoring housing developments financed by the former RDA). Under the Dissolution Act, existing unencumbered housing fund balances from the dissolving RDAs would not be transferred to the successor housing agency. However, certain future housing funds (such as borrowed SERAF payments or loan repayments made to the successor housing agency) would come to the successor housing agency for the purposes of conducting housing activities as required under California redevelopment law or to pay for administration expenses associated with these housing activities.

For more information, please contact M David Kroot, Bob Mills, Luis Rodriguez or any Goldfarb & Lipman attorney at 510-836-6336.



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LAW ALERT

IMMEDIATE ACTIONS FOR DEVELOPERS AFTER CRA V. MATOSANTOS

As you know, on December 29, 2011, the California Supreme Court delivered its decision in the California Redevelopment Association v. Matosantos. The court upheld the constitutionality of AB1x 26, the bill dissolving redevelopment agencies, and declared unconstitutional AB1x 27, the bill that would have allowed redevelopment agencies to continue to exist through an alternative redevelopment program. Pursuant to the California Supreme Court's opinion upholding AB1x 26, redevelopment agencies will be dissolved effective February 1, 2012 and all housing functions of the redevelopment agency will be transferred to either (a) the city, county or city and county that authorized the creation of the redevelopment agency; (b) the local housing authority; or (c) the California Department of Housing and Community Development.

If you have an existing, binding obligation with a redevelopment agency, we urge you to take the following actions as soon as possible:

1. Get in touch with the redevelopment agency to ensure your obligation has been included on the agency's Enforceable Obligation Payment Schedule ("EOPS") and ask the agency (if it does not have plans to do so already) to amend the EOPS to include all payments through at least June 30, 2012 (and preferably all payments through the life of your enforceable obligation). If your enforceable obligation does not appear on the EOPS, or if the EOPS does not include payments through at least June 30, 2012, there is a risk that

payments owed under the enforceable obligation may not be paid.

2. You should also ask the redevelopment agency which entity will assume the redevelopment agency's housing functions after February 1st once the redevelopment agency is officially dissolved. The entity that assumes the redevelopment agency's housing functions will be charged with the oversight and administration of your existing enforceable obligation. If you have any questions or concerns about which entity will be taking over the housing functions, now would be the time to discuss them with your contacts at the redevelopment agency and the potential successor entity.

We understand this is a challenging time and ABx1 26 has left many with questions regarding its implementation. Goldfarb & Lipman will host a question and answer session to address questions regarding AB1x 26 in the near future. In the interim, if you have any questions regarding how AB1x 26 may affect your organization, or any specific obligation or transaction with a redevelopment agency, please contact any attorney at Goldfarb & Lipman.

Please also find attached to this Law Alert an updated detailed analysis of the California Redevelopment Association v. Matosantos and AB1 x26.

For more information, please call Polly Marshall, M David Kroot, Isabel Brown, Erica Williams Orcharton, Luis Rodriguez, Vince Brown or any other Goldfarb & Lipman attorney at 510-836-6336.

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AMENDING AN AGENCY'S ENFORCEABLE OBLIGATION PAYMENT SCHEDULE TO ASSURE CONTINUED PAYMENT OF ENFORCEABLE OBLIGATIONS

In August 2011, each California redevelopment agency adopted an enforceable obligation payment schedule (the "EOPS") listing all of the agency's enforceable obligations (as defined in Section 34167(d))¹ for payments required to be made by the redevelopment agency through December 31, 2011. As a result of the implementation of AB x1 26 and the associated California Supreme Court decision in the *California Redevelopment Association v. Matosantos* litigation, all California redevelopment agencies will now be dissolved effective February 1, 2012.

A redevelopment agency (before February 1) and its successor agency (starting February 1) can only make payments on enforceable obligations (other than bonded indebtedness) listed on an EOPS until such time as the first recognized obligation payment schedule (the "ROPS") has been prepared by the successor agency, certified² and approved by the successor agency's oversight board to take over the function initially served

by the EOPS.³ The process for preparing, certifying and approving the ROPS may take well into May, thereby potentially leaving a gap between the period initially covered by the EOPS (through December 31, 2011) and the effectiveness of the first ROPS - a gap that could lead to an inability to pay, and the resulting default under, various enforceable obligations.

To avoid possibly defaulting on enforceable obligations between January and the operative date of the ROPS, each redevelopment agency should seriously consider amending its existing EOPS at a public meeting of the agency prior to February 1, 2012 to accomplish the following:

 Extend the payment schedule for the enforceable obligations required to be paid by the redevelopment agency (during January) and its successor agency (starting in February) for the period from January 1, 2012 through June 30, 2012 (just in case there are delays in the initial ROPS process);

¹ All Section references in this Law Alert refer to the California Health and Safety Code.

² The statute is unclear as to which party must "certify" the ROPS, presumably the auditor (See Section 34177(1)(2)(B)).

³ Goldfarb & Lipman will be sending additional advice on the process of preparing the ROPS soon.

- LAW ALERT

- Add any enforceable obligations of the redevelopment agency that were not previously listed on the EOPS because either: (1) no payments were due prior to December 31, 2011; or (2) the enforceable obligation was inadvertently omitted from the previously adopted EOPS; and
- List line items for staff costs and professional services contracts associated with the operation of the successor agency that are within the administrative cost allowance to which each successor agency will be entitled.

The suggested amendment to the EOPS can be made at any public meeting of the redevelopment agency (prior to February 1) or of the successor agency (starting February 1), and must be followed up with a notice in

accordance with Section 34169(g). The amended EOPS must also be posted on the agency's or its sponsoring community's website.

If you would like to discuss the contents of the amended EOPS, how your redevelopment agency or successor agency should treat any specific obligation or transaction, or the timing and notice procedures associated with amending the EOPS, please contact any attorney at Goldfarb & Lipman.

For more information, please call Jack Nagle, Lynn Hutchins, Karen Tiedemann, Rafael Yaquian, or any other Goldfarb & Lipman attorney at 510-836-6336.

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CALIFORNIA SUPREME COURT
DECISION IN CALIFORNIA
REDEVELOPMENT ASSOCIATION
V. MATOSANTOS AND RELATED
IMPLEMENTATION ACTIONS

UPDATED
JANUARY 18, 2012

Goldfarb & Lipman LLP www.goldfarblipman.com

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This analysis summarizes the California Supreme Court's (the "Court") decision announced on December 29, 2011, in the *California Redevelopment Association v. Matosantos* case (Part A), outlines the key provisions of AB x1 26 (the "Dissolution Act) that the Court found constitutional and that will now control the dissolution and winding down of every California redevelopment agency (Part B), and provides upcoming milestones for implementation of the Dissolution Act (Part C).

As emphasized in Part B and Part C, there are certain decisions and actions that each city or county (the "Sponsoring Community") that established an existing redevelopment agency (a "RDA") must make in January 2012 to determine whether it intends to become the "Successor Agency" and/or "Successor Housing Agency" to its soon to be dissolved RDA. See particularly, Part B, Sections IV and V for a discussion of these decisions and actions.

PART A. SUMMARY OF COURT DECISION AND REASONING

I. The Decision

On December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding the Dissolution Act constitutional and AB1x 27 (the "Alternative Redevelopment Program Act") unconstitutional.

The Court's bifurcated decision means that all RDAs will be dissolved under the constitutional Dissolution Act, and none will have the opportunity to opt into continued existence under the unconstitutional Alternative Redevelopment Program Act.

The Court also determined to push back the deadlines in the Dissolution Act arising prior to May 1, 2012 by four months. For instance, all RDAs will be dissolved and their successor agencies will begin to function on February 1, 2012 under the Court's decision (as opposed to the October 1, 2011 deadline specified in the Dissolution Act itself).

The Court's decision is final effective immediately.

II. The Court's Reasoning

The Court found the Dissolution Act constitutional because the Legislature has the broad power to establish or dissolve local agencies as it sees fit. The Court held

that nothing in the text of Article XVI, Section 16 of the California Constitution (the tax increment financing provision) or any constitutional mandates added under Proposition 22 in November 2010 withdraws from the Legislature the power to dissolve RDAs for the benefit of the State.

The Court found the Alternative Redevelopment Program Act unconstitutional concluding that the continuation payments required under the Alternative Redevelopment Program Act were not in fact "voluntary" and thus violate the prohibitions in Article XIII, Section 25.5 of the California Constitution (Proposition 22) related to the enactment of any laws that require RDAs to shift funds to schools or other agencies.

The Court held that the Dissolution Act and the Alternative Redevelopment Program Act are severable from one another because of the differences in the application of the severability clauses of each bill and because large parts of the Dissolution Act are independently enforceable despite the Court's finding that the Voluntary Program Act is unconstitutional. Thus, the Court held that all but one minor portion of the Dissolution Act can survive despite the Court's ruling to overturn the Alternative Redevelopment Program Act.¹

Finally, the Court reformed and revised the effective dates or deadlines for performance under the Dissolution Act arising before May 1, 2012, calling instead for those dates and deadlines to be advanced four months from the dates specified in the Dissolution Act.

III. Possible Future Legislation

The California Redevelopment Association and various housing and infill development advocacy groups have indicated their intent to seek legislative modifications or proposals for continuing economic development and affordable housing activities in California. It is premature to speculate on the nature or likely outcome of such proposals. Goldfarb & Lipman will continue to carefully monitor and provide timely information regarding the progress of any future legislative actions.

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¹ Only those provisions of the Dissolution Act allowing communities to establish new RDAs and requiring them to make the continuation payments are unconstitutional.

PART B. DISSOLUTION ACT

I. Introduction

As detailed in this Part B, the Dissolution Act, as now found constitutional by the Supreme Court:

- Continues the suspension and prohibition of most redevelopment activities in effect since late June, 2011;
- Dissolves RDAs as of February 1, 2012 (the new dissolution date established by the Supreme Court);
- Creates successor agencies ("Successor Agency" or "Successor Agencies") and oversight boards ("Oversight Board" or "Oversight Boards") to continue to satisfy enforceable obligations of each former RDA, and administer the dissolution and wind down of each dissolved RDA; and
- Establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller's Office in the dissolution process and satisfaction of enforceable obligations of former RDAs.

II. Suspension of RDA Activities and Preservation of RDA Assets and Revenues

As has been the case since the enactment of the Dissolution Act in late June 2011, a RDA continues to be unauthorized to do any of the following pending its dissolution:

- Incur new indebtedness or other obligations or restructure existing indebtedness and other obligations;
- Make loans or grants;
- Enter into contracts;
- Amend existing agreements, obligations or commitments;
- Renew or extend leases or other agreements;

- Transfer funds out of the Low and Moderate Income Housing Fund (the "Housing Fund");
- Dispose of or transfer assets;
- Acquire real property in most circumstances;
- Prepare, adopt, amend or merge redevelopment plans;
- Approve any program, project or expenditure;
- Prepare or amend implementation plans, relocation plans or other planning documents;
- Cause development or rehabilitation of housing units;
- Join a joint powers authority;
- Form or join a separate legal entity;
- Bring a validation action in connection with issuance of revenue bonds;
- Commence an eminent domain proceeding;
- Prepare a draft EIR;
- Undertake various affordable housing activities;
- Accept financial assistance; or
- Increase employee compensation, bonuses or number of RDA employees and officials.

According to the Dissolution Act, this suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of RDAs so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools.

III. Permitted and Required RDA Activities Prior to Dissolution

Until February 1, 2012 (when RDAs are dissolved), a RDA is authorized to:

- Make scheduled payments on and perform obligations required under its "Enforceable Obligations," which include:
 - o Bonds;
 - o Loans borrowed by a RDA;
 - Payments required by federal or state government or for employee pension obligations;
 - o Judgments or settlements;
 - Legally binding and enforceable agreements or contracts that are "not otherwise void as violating the debt limit or public policy"; and
 - o Contracts for administration or operation of the RDA.
- Set aside reserves as required for bonds;
- Preserve all assets and records and minimize RDA obligations and liabilities;
- Cooperate with its Successor Agency and auditing entities (as described below); and
- Avoid triggering defaults under Enforceable Obligations.

In addition, by now the Dissolution Act has required each RDA to:

- Prepare an Enforceable Obligation Payment Schedule no later than late August, 2011, setting forth specified information about the RDA's Enforceable Obligations;
- Adopt the Enforceable Obligation Payment Schedule at a public meeting;

² With one exception, "Enforceable Obligations" are defined in the same way during the suspension period and the post-dissolution period. During the suspension period, the definition of "Enforceable Obligations" does not exclude agreements between a RDA and its Sponsoring Community (although asset transfers under such agreements may be subject to unwinding), while following dissolution most types of agreements between a RDA and its Sponsoring Community are excluded from the definition of "Enforceable Obligations" (see further discussion in Section VII below).

- Post the Enforceable Obligation Payment Schedule on the RDA's or its Sponsoring Community's website;
- Transmit the Enforceable Obligation Payment Schedule by mail or electronic means to the County Auditor-Controller, the State Controller and the Department of Finance;³
- Designate a RDA official to whom the department may make information requests;
- Prepare a preliminary draft of the initial Recognized Obligation Payment Schedule and deliver such schedule to the Successor Agency; and
- Produce documents associated with Enforceable Obligations upon request of the State Controller or Department of Finance.

The Department of Finance may review a RDA action or Successor Agency action pursuant to an Enforceable Obligation Payment Schedule or a Recognized Obligation Payment Schedule, and such actions will not be effective for three business days, pending a request for review by the department. If the department requests a review of a given RDA action, the department shall have ten days from the date of its request to approve the RDA action or return it to the RDA for reconsideration.

IV. Dissolution of RDAs/Creation of Successor Agencies

As of February 1, 2012:

- Every RDA will be dissolved; and
- A Successor Agency will be created for each RDA.

The Successor Agency will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity. In that case, the Successor Agency will be the first taxing entity submitting to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency.

³ Notification providing the website location of the Enforceable Obligation Payment Schedule will suffice to meet this requirement.

Technically, a Sponsoring Community needs to adopt a resolution and deliver it to the County Auditor-Controller no later than **January 13, 2012** only if it elects not to act as the Successor Agency for its former RDA. We advise that a Sponsoring Community electing to serve as Successor Agency adopt a resolution as well to indicate a clear statement of intent.

The actions of the Successor Agency will be monitored, and in some cases approved, by the Oversight Board as described in Section VIII below.

All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency, except as described in Section V below for affordable housing assets.

V. Transfer of Housing Functions of Former RDA

The Sponsoring Community may elect to assume the housing functions and take over the housing assets of the former RDA, excluding amounts in the former RDA's Housing Fund, along with related rights, powers, liabilities, duties and obligations thereby becoming a "Successor Housing Agency" to the former RDA. While no specific date for such action is set forth in the Dissolution Act, we recommend that a Sponsoring Community desiring to serve as a Successor Housing Agency adopt a resolution to that effect no later than January 31, 2012.

If the Sponsoring Community does not elect to become the Successor Housing Agency and assume the former RDA's housing functions, such housing functions and all related assets will be transferred to the local Housing Authority (or Department of Housing and Community Development, if there is no local Housing Authority).

The entity that becomes the Successor Housing Agency and assumes the housing functions of a former RDA will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

The Dissolution Act requires Successor Agencies to repay amounts previously borrowed from the Housing Fund (i.e. to make SERAF payments in prior years),

⁴ However, in what is believed to be inadvertent drafting, the Dissolution Act makes it less clear how the former RDA's housing assets, such as property, will be transferred.

repayment of which had been deferred as of the effective date of the Dissolution Act. These repaid funds would presumably be paid to the entity that becomes the Successor Housing Agency and assumes the housing functions of the former RDA.

The Dissolution Act requires Oversight Boards to direct Successor Agencies to list amounts owed to the Housing Fund on the Recognized Obligation Payment Schedule.

VI. Role of Successor Agencies

All assets, properties, contracts, leases, books and records, buildings, equipment and the existing Housing Fund balance of a former RDA will be transferred to the control of the Successor Agency on February 1, 2012, according to the Supreme Court's modified timeline.

A Successor Agency is required to make payments and perform other obligations due for Enforceable Obligations⁵ of the former RDA, which include:

- Bonds;
- Loans borrowed by the RDA (including amounts borrowed in past years from the Housing Fund);
- Payments required by federal or state government or for employee pension obligations;
- Judgments or settlements; and
- Legally binding and enforceable agreements or contracts⁶ that are "not otherwise void as violating the debt limit or public policy" (at Oversight Board direction, a Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination).

To facilitate this payment of Enforceable Obligations, a Successor Agency is required to prepare a Recognized Obligation Payment Schedule for each six month period of each fiscal year, including identifying the funding source for all

⁵ With one exception described in footnote 2 above, "Enforceable Obligations" are defined in the same way during the post-dissolution period and during the suspension period.

⁶ See Section VII below, regarding the exception that most contracts between a former RDA and its Sponsoring Community will be void and will not constitute an Enforceable Obligation upon dissolution of the RDA.

Enforceable Obligations of the former RDA. The first draft of the Recognized Obligation Payment Schedule is now due by March 1, 2012, and should cover the balance of the current fiscal year through June 30, 2012 and should also project the dates and amounts of scheduled payments for each Enforceable Obligation for the remainder of the time period the RDA would have been authorized to obligate tax increment. Presumably, the Successor Agency's draft of the initial Recognized Obligation Payment Schedule should be based on the draft Recognized Obligation Payment Schedule prepared by the former RDA during the suspension period (See discussion in Part B, Section III).

A Successor Agency is required to dispose of the former RDA's assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds).⁷

A Successor Agency is required to effectuate the transfer of housing functions of the former RDA to its Successor Housing Agency (i.e. the Sponsoring Community or applicable Housing Authority or the Department of Housing and Community Development).

A Successor Agency is required to wind down all other affairs of the former RDA.

A Successor Agency is required to prepare administrative budgets for Oversight Board approval and pay administrative costs.

Subject to the approval of the Oversight Board, the Successor Agency's annual administrative costs will be an amount up to five percent of the property tax allocated to the Successor Agency for FY 2011-12 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than \$250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency).

VII. Treatment of Agreements between a RDA and its Sponsoring Community or Other Public Agency/Public Entity

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and its Sponsoring Community, and that such

⁷ The Oversight Board may direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements related to the construction or use of such asset.

agreements, contracts or arrangements are invalid and not binding on Successor Agencies upon dissolution of the RDA. These provisions do not apply to the following agreements, which may be deemed Enforceable Obligations and binding upon Successor Agencies:

- A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of bonds, notes, certificates of participation or other similar indebtedness, and solely for the purpose of securing or repaying such indebtedness;
- A written agreement between a RDA and its Sponsoring Community that
 provided loans or other startup funds for the RDA that was entered into
 within two years of the formation of the RDA; or
- A joint exercise of powers agreement in which the RDA is a member of the joint powers authority.⁸

Beginning upon effectiveness of the Dissolution Act in late June 2011, the State Controller has been directed to review RDA activities and determine whether an asset transfer has occurred after January 1, 2011 between the RDA and its Sponsoring Community or other public agency. If the State Controller determines that such an asset transfer did occur and the recipient has not contractually committed such assets to a third party to expend or otherwise encumber those assets, such assets will be ordered returned to the RDA or Successor Agency for payment of recognized obligations or distribution as property taxes.

In any instance where the Oversight Board finds that early termination would be in the best interest of the taxing entities, the Dissolution Act directs Oversight Boards to ensure that Successor Agencies terminate any agreement between the former RDA and any local public entity within the same county that obligates the former RDA to provide funding for debt service obligations of such local public entity or for the construction or operation of facilities owned or operated by such local public entity.

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⁸ However, upon assignment to the Successor Agency by operation of the Dissolution Act, the Successor Agency's rights, duties and performance obligations under that joint exercise of powers agreement will be limited by the constraints imposed on Successor Agencies by the Dissolution Act.

VIII. Oversight Boards

An Oversight Board is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues as described in Section X below.

The Oversight Board of the Successor Agency will consist of 7 members appointed by/representing: 9 10

- County Board of Supervisors (two members);
- Mayor (one member);
- County Superintendent of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity (one member); and
- A former RDA employee appointed by Mayor/Board of Supervisors (one member).

Under the Court's decision, the Oversight Board membership must be completed by May 1, 2012.

The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former RDA and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities.

The actions of the Oversight Board of each Successor Agency will in turn be overseen by the Director of the Department of Finance and may be subject to disapproval or modification.

Commencing July 1, 2016, all of the Oversight Boards for the various former RDAs in a particular county will be consolidated into a single county-wide Oversight Board of specified composition.

⁹ Different rules apply for the composition of the Oversight Board for the former RDA of a city and county (i.e., the City and County of San Francisco).

Oversight Board actions will not be effective for three business days pending a request for review by the Department of Finance. If the department requests a review of a given Oversight Board action, the department shall have ten days from the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration. The Oversight Board has specified obligations with respect to maintaining a website and providing specified notification to various state officials.

IX. Role of County Auditor-Controller

The Dissolution Act, as modified by the Court's decision, requires the County Auditor-Controller to:

- By July 1, 2012, conduct an audit of each former RDA's assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by July 15, 2012;
- Annually determine the amount of property tax increment that would have been allocated to a RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund"); and
- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes, as described in Section X below.

Actions of the County Auditor-Controller will not be effective for three business days pending a request for review by the State Controller. If the department requests a review of a given County Auditor-Controller action, the department will have ten days from the date of its request to approve the County Auditor-Controller action or return it to the County Auditor-Controller for reconsideration.

X. Payments from Trust Fund

The Dissolution Act requires the County Auditor-Controller to allocate moneys in the Trust Fund established for each former RDA as follows:

• To pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;

- To the Successor Agency to enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;
- To the Successor Agency to pay for administrative costs under the administrative budget approved by the Oversight Board; and
- Any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

If a Successor Agency determines, and the County Auditor-Controller and the State Controller verify, that the Successor Agency will not have sufficient funds to pay all amounts above, then the deficiencies shall be deducted in the following order from the Trust Fund payments to:

- School entities and local agencies (as normal property taxes);
- Administrative costs of the Successor Agency;
- Pass-through payments to school entities and local entities that have been subordinated to the payment of Enforceable Obligations;
- Enforceable Obligations payable by the Successor Agency; and
- Non-subordinated pass-through payments to school entities and local entities.

The Dissolution Act allows statutory pass-through payments received by school districts, community college districts and offices of education between FY 2011-2012 and FY 2015-2016 to be used for land acquisition, construction, reconstruction, remodeling, maintenance or deferred maintenance of educational facilities.

No later than May 16, 2012 and June 1, 2012 and each January 16 and June 1 thereafter, the County Auditor-Controller must transfer the amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule from the Trust Fund of each Successor Agency into a Redevelopment Obligation Retirement Fund to be administered by each Successor Agency. The Successor Agency must then make payments on listed Recognized Obligation Payment Schedule from that fund.

XI. Miscellaneous

The Dissolution Act clarifies that community development commissions may continue their housing authority and other local community development functions (other than redevelopment) unaffected by the Dissolution Act.

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years.

The Dissolution Act includes a provision lengthening the period to challenge RDA actions taken after January 1, 2011 from ninety days to two years.

The Dissolution Act requires that any action contesting the validity of portions of the Dissolution Act or challenging acts taken pursuant to the Dissolution Act be brought in the Sacramento County Superior Court.

The Dissolution Act appropriates \$500,000 to the Department of Finance for allocation to the State Controller, State Treasurer and Director of Finance to undertake the duties listed above.

PART C. KEY MILESTONES FOR IMPLEMENTATION OF THE DISSOLUTION ACT

The Supreme Court promulgated simple reformation rules calling for a four month extension of those dates and deadlines contained in the Dissolution Act that were prior to May 1, 2012. The milestone schedule outlined below honors those rules, although some anomalies and inconsistencies may be caused by those rules that may merit further clarification.

- Upon effectiveness of the Dissolution Act: State Controller may commence review of RDA asset transfers after January 1, 2011. [Section 34167.5¹¹]
- No specified date: State Controller may order the assets improperly transferred by a RDA to its Sponsoring Community after January 1, 2011 to be returned to the RDA (or to its Successor Agency). [Section 34167.5]

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¹¹ All section references are to the Health and Safety Code. Many of the dates provided in this Part C consist of the reformed dates provided by the Supreme Court as described above in Part A.II.

- After Court decision: Redevelopment activities continue to remain suspended except for limited specified activities pending dissolution of RDAs. [Sections 34161-34165]
- No later than January 13, 2012: Sponsoring Community decides whether to serve as a Successor Agency by resolution. [Section 34173(d)(1)]
- No later than January 13, 2012: Sponsoring Community that elects not to serve as a Successor Agency files a copy of resolution to that effect with the County Auditor-Controller. [Section 34173(d)(1)]
- No later than January 31, 2012: Sponsoring Community decides whether to serve as Successor Housing Agency by resolution. [Section 34176(a)]
- No later than January 31, 2012: A RDA should consider any appropriate amendments to its previously adopted Enforceable Obligation Payment Schedule to reflect payments due after December 31, 2011. [Section 34169(g)]
- No later than January 31, 2012: A RDA that has not prepared a preliminary draft of the initial Recognized Obligation Payment Schedule should do so and provide it to the Successor Agency. Those RDAs that have prepared such preliminary drafts should forward it to the Successor Agency. [Section 34169(h)]
- February 1, 2012: The existing terms of any memorandum of understanding with an employee organization will be deemed to have been assumed by the Successor Agency and the Successor Agency shall become the employer of all employees of the former redevelopment agency. [Section 34190(e)]
- February 1, 2012: RDA is dissolved. [Section 34172(a)(1)]
- February 1, 2012: RDA agreements with Sponsoring Community void (with limited exceptions). [Sections 34171(d)(2)-(3), 34178(a), 34181(d)]
- February 1, 2012: All dissolved RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing Housing Fund balance), except other housing assets, transferred to Successor Agency. RDA delivers Enforceable Obligation Payment Schedule to Successor Agency. Transfer of RDA housing assets (excluding existing Housing Fund balances) to Successor Housing Agency. [Sections 34175(b), 34176]

- February 1, 2012: Successor Agency establishes Redevelopment Obligation Retirement Fund. [Section 34170.5]
- February 1, 2012: County Auditor-Controller establishes Redevelopment Property Tax Trust Fund. [Section 34170.5]
- On and after February 1, 2012: Successor Agency permitted to make payments only as listed on Enforceable Obligation Payment Schedule until the Recognized Obligation Payment Schedule becomes operative. [Section 34177(a)(1)]
- From February 1, 2012 to July 1, 2012: Successor Agency prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to February 1, 2012. [Section 34177(a)(5)]
- By March 1, 2012: Successor Agency prepares initial draft of Recognized Obligation Payment Schedule for the Enforceable Obligations of the former RDA, subject to review and certification by external auditor as to accuracy and approval by Oversight Board. [Section 34177(1)(2)]
- No later than April 1, 2012 and May 1, 2012, and each December 1 and May 1 thereafter: Successor Agency reports to the County Auditor-Controller if the total amount available to the Successor Agency is insufficient to fund the specified payments in the next six-month fiscal period. County Auditor-Controller notifies State Controller and DOF no later than 10 days from the date of that notification from the Successor Agency. [Section 34183(b)]
- April 15, 2012: Successor Agency submits first Recognized Obligation Payment Schedule to State Controller and DOF for the period of January 1, 2012 to June 30, 2012 and should also project the dates and amounts of scheduled payments for each Enforceable Obligation for the remainder of the time period the RDA would have been authorized to obligate tax increment. Successor Agency prepares new Recognized Obligation Payment Schedule for each six month period thereafter for approval by Oversight Board. Approved Recognized Obligation Payment Schedules are posted on Successor Agency website and submitted to DOF, Controller and County Auditor-Controller. [Sections 34177(1)(3), 34183(a)(2)]
- Commencing on May 1, 2012: Successor Agency may pay only those payments listed in the approved Recognized Obligation Payment Schedule.

- Statements of Indebtedness are no longer recognized for dissolved RDAs. [Section 34177(a)(3)]
- By May 1, 2012: Oversight Board elects and reports name of chairperson and other members to DOF. [Section 34179(a)]
- No specified date but after formation of Oversight Board: Each Oversight Board informs DOF of a designated contact person and related contact information for the purpose of communicating with DOF. [Section 34179(a)]
- May 15, 2012: Governor appoints persons to unfilled positions on Oversight Board (or any member position that remains vacant for more than 60 days). [Section 34179(b)]
- No later than May 16, 2012 and June 1, 2012, and each January 16 and June 1 thereafter: County Auditor-Controller transfers an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule from the Trust Fund of each Successor Agency into the Redevelopment Obligation Retirement Fund of that Successor Agency. Successor Agency makes payments on listed Recognized Obligation Payment Schedule from that fund. [Section 34183(a)(2)]
- By July 1, 2012: County Auditor-Controller completes audit of each dissolved RDA. [Section 34182(a)(1)]
- By July 15, 2012: County Auditor-Controller provides the State Controller copy of all audits performed on dissolved RDAs. [Section 34182(b)]
- By October 1, 2012: County Auditor-Controller reports specified financial information to the Controller and DOF. [Section 34182(d)]
- January 1, 2013: California Law Revision Commission drafts a Community Redevelopment Law cleanup bill for consideration by the Legislature. [Section 34189(b)]
- July 1, 2016: Consolidation of all Oversight Boards into one county-wide Oversight board in each county where more than one Oversight Board was created. [Section 34179(j)]

• After July 15, 2016: Governor appoints persons to unfilled positions on county-wide Oversight Board (or any member position that remains vacant for more than 60 days). [Section 34179(k)]

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THE FINAL ACTIONS OF REDEVELOPMENT AGENCIES AND THE SET-UP OF SUCCESSOR AGENCIES

As of February 1, 2012, all California redevelopment agencies will dissolve and their assets and functions will transfer to a successor agency and a successor to the agency's housing functions. Following is a list of actions and other consideration items to be addressed in the next few weeks by a dissolving redevelopment agency ("RDA"), as well as by the community that formed the RDA ("Sponsoring Community") and that has chosen to act as its RDA's successor agency ("Successor Agency") and/or as the successor to the RDA's housing functions:

Legal Status

Successor Agency – To preserve the limited liability provided to a Successor Agency in ABx1 26 (and to insulate the Sponsoring Community's other separate funds and assets from any potential liability), the Successor Agency should take all actions and hold all assets of the former RDA as the Successor Agency to the former RDA. As an example, for the City of California Dreaming, the assets held and the actions taken should be in the name of the "City of California Dreaming, as successor agency to the California Dreaming Redevelopment Agency." The governing board of the Successor Agency will be the Sponsoring Community's governing board (City Council or Board of Supervisors), although subject to the Oversight Board when formed. The City Council or Board of Supervisors, as applicable, should agendize and conduct meetings on Successor Agency items on a separate place on its agenda acting as the Successor Agency (not simply as the City or County), take all actions in its capacity as the Successor Agency and enter into all agreements in its capacity as the Successor Agency. The contents of the former RDA

- website related to redevelopment dissolution (such as the EOPS) should be transferred to the Successor Agency website (perhaps a separate and distinct page of the Sponsoring Community's website).
- Successor to RDA's Housing Functions –
 unlike the Successor Agency to the RDA, the
 successor to the RDA's housing functions will
 act in its own capacity relative to the former
 housing functions of the RDA, not as successor
 agency to the former RDA. So, for example,
 the successor to the housing functions of the
 former California Dreaming Redevelopment
 Agency will act as the City of California
 Dreaming or the Housing Authority of
 California Dreaming.

Asset Transfers

- As of February 1, 2012: All RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing fund balances including the existing Housing Fund balance), other than housing assets (exclusive of the existing Housing Fund balance), transfer to the Successor Agency.
- As of February 1, 2012: All RDA housing assets (excluding the existing Housing Fund balance¹) transfer to the successor to the RDA's housing function.
- Based on our preliminary consultations with title companies and the treatment of similar types of entity reorganizations under California law, deeds, certificates of acceptance,

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¹ SB 654, a pending urgency bill introduced by Senator Steinberg, would revise the current law so that existing Housing Fund balance would instead transfer to the successor to the RDA's housing functions for continued affordable housing production, rather than to the Successor Agency for RDA wind-down purposes.

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- assignment agreements and other similar transfer documents should not be necessary to transfer assets and contracts as these should all transfer as a matter of law. We recommend that staff prepare two internal memoranda: one listing the properties, other assets and agreements transferred from the RDA to the Successor Agency and the other one listing the properties, other assets and agreements transferred from the RDA to the successor to the RDA's housing functions so there is a clear record of which of the former RDA's assets and agreements were transferred to which successor entity.
- We suggest for each contract in which the former RDA was a party that the successor entity send notice to the other parties in the contract of the name and address of the successor entity. Similarly, for any former RDA agreements in which payments may be due to the former RDA, the successor entity should send notice of the name in which, and location where, payments are to be made in the future. Similarly, for any secured RDA loan where the RDA was a junior lien holder, the successor entity should record a new notice of default with the successor entity name and address where notices are to be sent. We suggest staff send these notices as soon as possible and no later than the end of February.
- Based on preliminary discussions with members of the Accounting Standards Committee of the California State Association of County Auditors, we suggest that the Successor Agency retain all former RDA funds on hand and not deliver them to the County Auditor- Controller until the County's initial audit of the former RDA is complete or until further legislative direction is given.

Accounting

The following actions should be implemented on February 1, 2012:

• All accounts of the former RDA transfer to the Successor Agency. To preserve the limited liability of the Successor Agency provided in ABx1 26, the Successor Agency should hold all former RDA accounts separately from its other accounts and as the Successor Agency to the former RDA. We understand that many successor agencies plan to use the same account numbers as used by the former RDAs, changing the name on the accounts to the Successor Agency as successor to the former RDA. These accounts should

- initially include a "housing account" where the existing balance in the RDA's Housing Fund should be placed pending the County audit and possible new legislative direction. We strongly suggest NOT including the former RDA accounts in any pooled account arrangements with other funds of the Sponsoring Community.
- The Successor Agency is required to establish a Redevelopment Obligation Retirement Fund. Funds transferred from the former RDA on February 1, 2012 and funds received from future asset dispositions should be held in the accounts described in the previous item and not in the Redevelopment Obligation Retirement Fund, which is intended as the repository for property taxes received from the County Auditor-Controller to pay enforceable obligations as set forth in the Enforceable Obligation Payment Schedule ("EOPS") or, when effective, the Recognized Obligation Payment Schedule ("ROPS"). Some Successor Agencies of former RDAs that administered multiple project areas are intending to set up sub-accounts in the Redevelopment Obligation Retirement Fund to track property taxes received and obligations paid with respect to each separate project area.
- All accounting records for properties, other
 physical assets and agreements of the former RDA
 (excluding the housing assets for the former RDA
 but including the former Housing Fund) should be
 listed on accounts of the Successor Agency as
 successor agency to the former RDA and not on
 the RDA's or Sponsoring Community's accounts.
- Accounting records for all housing assets (excluding the former Housing Fund) should show the housing assets of the former RDA in the name of the entity assuming the former RDA's housing functions.
- The successor to the former RDA's housing functions should create a new "housing fund" in its accounts where any loan repayments or receipt of funds from disposition of former RDA housing assets should be placed until used pursuant to redevelopment law provisions relating to the use of affordable housing funds.

EOPS/ROPS

 By January 31, 2012, the RDA delivers latest adopted EOPS and preliminary draft ROPS to the Successor Agency.

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- On and after February 1, 2012, the Successor Agency is permitted to make payments only as listed on the EOPS until the ROPS becomes operative, and then permitted to make payments only as listed on the ROPS.
- As of February 1, 2012, RDA agreements with the Sponsoring Community are deemed void (with limited exceptions). ABx1 26 directs the Successor Agency to not make payments on these agreements and to remove them from the EOPS. However, given pending legislation and litigation on this issue, we suggest continuing to list these agreements on the EOPS and the ROPS until further clarification and subject to community-specific advice with regard to each community's particular agreements and circumstances.
- From February 1, 2012 to July 1, 2012, the Successor Agency is prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to February 1, 2012.
- By March 1, 2012, the Successor Agency prepares an initial ROPS (including an administrative budget), subject to review and certification by an external auditor as to accuracy and approval by the Oversight Board. The first draft of the ROPS should cover the six-month period from January 1, 2012 through June 30, 2012, and should also project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period the RDA "would have been authorized to obligate property tax increment" (which we interpret to mean the debt service schedule for the life of the obligation). Due to the relatively late date for formation of the

Oversight Board, we suggest that the Successor Agency may also decide to prepare an additional ROPS at the same time to cover the next sixmonth period from July 1, 2012 through December 31, 2012.

Employees

 As of February 1, 2012: The existing terms of any memorandum of understanding with an employee organization will be deemed to have been assumed by the Successor Agency and the Successor Agency shall become the employer of all employees of the former RDA.

Oversight Board

- The Successor Agency may consider contacting the appointing entity for each representative on its Oversight Board to discuss appointment procedures and timing. Some Successor Agencies may find it advantageous to facilitate formation of the Oversight Board prior to the May 1, 2012 deadline.
- The Sponsoring Community should consider its appointments to the Oversight Board, which are to be made by the Mayor or Chair of the Board of Supervisors, as applicable.

The California Redevelopment Association has set up expert committees that are addressing many of these implementation and accounting issues. Information from those CRA committees may be accessed at: http://www.calredevelop.org.

For more information, please call Lynn Hutchins, Karen Tiedemann, Jack Nagle, Rafael Yaquian, Josh Mukhopadhyay or any attorney at Goldfarb & Lipman.



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LAW ALERT

THE NEW ERA: SUCCESSOR AGENCIES AND NEXT STEPS

On February 1, 2012, every California redevelopment agency was dissolved and its assets and functions transferred to a successor agency and a successor to the redevelopment agency's housing functions. Attached is a detailed list of actions and other consideration items to be addressed in the next couple of weeks by the former redevelopment agency's successor agency, including detailed advice regarding the preparation of the Recognized Obligation Payment

Schedule, to be completed by March 1, 2012.

For more information, please call Jack Nagle, Lynn Hutchins, Karen Tiedemann, Thomas Webber, Dianne Jackson McLean, Polly Marshall, Barbara Kautz, Rafael Yaquian, Josh Mukhopadhyay or any attorney at Goldfarb & Lipman.

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THE NEW ERA: SUCCESSOR AGENCIES AND NEXT STEPS

On February 1, 2012, every California redevelopment agency ("RDA") dissolved and its assets and functions transferred to a successor agency and a successor to the RDA's housing functions. Following is a list of actions and other consideration items to be addressed in the next couple of weeks by the former RDA's successor agency ("Successor Agency") as opposed to the successor to the RDA's housing functions ("Housing Successor") which is not required to take specific organizational actions in the next few weeks. This Law Alert does not address the situation where the community that formed the RDA ("Sponsoring Community") elected to NOT act as its former RDA's Successor Agency and those communities should consult their counsel regarding those special circumstances.

A. SUCCESSOR AGENCY ORGANIZATIONAL ISSUES

1. <u>Organizational Issues</u>

To preserve the limited liability provided to a Successor Agency in ABx1 26 (and to insulate the Sponsoring Community's other separate funds and assets from any potential liability), the Sponsoring Community should take all actions pursuant to ABx1 26 as the Successor Agency to the former RDA (not simply as the City or County). This means that the Sponsoring Community should agendize and conduct meetings on Successor Agency items on a separate place on its agenda acting as the Successor Agency, take all actions in its capacity as the Successor Agency and enter into all agreements in its capacity as the Successor Agency. The governing board (City Council or Board of Supervisors, the "Governing Board") and officers of the Sponsoring Community will serve in that same capacity when the Sponsoring Community acts in its capacity as the Successor Agency. There is no need to adopt separate bylaws, conflict of interest policy or similar documents for the Successor Agency as the laws, conflict of interest policy, documents and rules governing conduct of the Sponsoring Community will also govern the conduct of the Sponsoring Community in its capacity as Successor Agency. We suggest that the Governing Board adopt a resolution clarifying the limited role and liabilities of the Successor Agency at one of the Successor Agency's first meetings if this was not done in the resolution electing to be a Successor Agency.

2. Budgets, Appropriations and EOPSs

In our view, based on the apparent legislative intent of ABx1 26, a Successor Agency does <u>not</u> need to adopt a budget or make appropriations in connection with paying enforceable obligations on an Enforceable Obligation Payment Schedule ("EOPS") or a Recognized Obligation Payment Schedule ("ROPS"), except as discussed below in

Section C.3 regarding an administrative budget. In essence, the last EOPS adopted by the RDA and delivered to the Successor Agency by January 31, 2012, serves as the budget for the Successor Agency since the Successor Agency is permitted to make payments only as listed on the EOPS until the ROPS becomes operative, and then is permitted to make payments only as listed on the ROPS (which then serves, in effect, as the Successor Agency's budget).¹

As of February 1, 2012, RDA agreements with the Sponsoring Community are deemed invalid (with limited exceptions). ABx1 26 directs the Successor Agency to not make payments on these agreements and to remove them from the EOPS. However, given pending legislation and litigation on this issue, we suggest continuing to list these agreements on the EOPS and the ROPS until further clarification and subject to community-specific advice with regard to each community's particular agreements and circumstances as discussed in more detail below in Section C.2. ABx1 26 appears to suggest that the Governing Board of the Successor Agency officially adopt the EOPS, modified to the extent each community deems appropriate with regard to former RDA/Sponsoring Community agreements. If the Governing Board of the Successor Agency adopts the EOPS, we suggest that this be done in a combined action with the preparation of the ROPS as discussed in Part B below. Notification of the Successor Agency's adoption of the EOPS to the County Auditor-Controller, State Controller and Department of Finance along with posting the adopted EOPS on the Successor Agency's website may be appropriate depending on the scope of any changes the Successor Agency makes to the EOPS.

B. FIRST ROPS PROCEDURAL ISSUES

By March 1, 2012, the Successor Agency must prepare an initial draft of the ROPS (including an administrative budget), subject to review and certification by an external auditor (the "External Auditor") as to accuracy and approval by the oversight board charged with overseeing the Successor Agency's actions (the "Oversight Board"). (The External Auditor is the auditor commissioned by the County Auditor-Controller to prepare an "agreed procedures audit" of the former RDA.) We recommend that the Governing Board of the Successor Agency adopt the draft ROPS by resolution (perhaps together with the EOPS) to provide an opportunity for public comment, although there is no absolute requirement in ABx1 26 to do so.

After the ROPS is prepared, the Successor Agency sends it to the County Auditor-Controller for certification as to its accuracy by the designated External Auditor. We suggest sending a courtesy copy to the State Controller and State Department of

¹ As a matter of practice, a Sponsoring Community may feel more comfortable adopting a budget and making appropriations in its role as the Successor Agency to the former RDA. There is no harm in doing so, and in such cases, we suggest adding provisions to the resolution approving the EOPs and ROPS stating that the EOPS and ROPS, each acting during their designated operative period, serve as the budget for the Sponsoring Community in its role as the Successor Agency and appropriating funds pursuant to the EOPS and ROPS.

Finance ("State Entities") and the Oversight Board at the same time the draft ROPS is sent to the County Auditor-Controller (or as soon thereafter as the Oversight Board is formed). The ROPS, as certified by the External Auditor, is then sent to the Oversight Board for its approval. A copy of the approved ROPS is submitted to the County Auditor-Controller, State Controller and the Department of Finance and is to be posted on the Successor Agency's website.

Unfortunately, the dates set forth in the statute (as modified by the Supreme Court order) do not work in a logical sequence as the external audit commissioned by the County Auditor-Controller and prepared by the External Auditor as the basis for its certification of the ROPS is not required to be completed until July 1, 2012 (although it may be completed earlier) and the Oversight Board may not be formed until May 1, 2012 (although it may be formed earlier), yet the certified and approved ROPS is to be sent to the State Entities no later than **April 15, 2012**.

Our suggestion in situations where a ROPS is not certified and approved by April 15th, is that the Successor Agency send the State Entities, the County Auditor-Controller and the Oversight Board: (1) a copy of the draft ROPS; (2) copies of the letters sent earlier in the process that previously transmitted the draft ROPS to the County Auditor-Controller and the Oversight Board to institute efforts toward the required certification and approval; and (3) a cover letter to the effect that the Successor Agency has sent the ROPS to those agencies for action which has not occurred yet, and that the Successor Agency will send notice of the further actions when they have been completed by the External Auditor and the Oversight Board.

C. FIRST ROPS CONTENTS – TIPS TO CONSIDER

1. Form of ROPS

There is no statutorily prescribed form to prepare the first ROPS. Some redevelopment agencies prepared initial preliminary drafts of a ROPS in September 2011, and the form used at that time could be a reasonable starting point. Likewise, an amended EOPS could provide a good starting point in cases where the dissolving RDA did a recent amendment to its EOPS in January 2012 to include the six-month period from January through June 2012 (which is also the core period to be covered by the first ROPS).

In any event, the form for the ROPS should include a matrix of cells that includes rows and columns roughly as follows:

- A line (row) for each enforceable obligation (see below for types of obligations to include).
- Columns for project name/debt obligation, payee, description of obligation, total outstanding payment amount, and total payment amount during the ROPS period.

- Six columns reflecting the six months in the first ROPS period (January through June 2012) into which the payment requirement for each enforceable obligation for each month can be entered.
- A column to enter the anticipated funding source for each listed enforceable obligation, with the following basic choices, as listed in ABx1 26 (more than one choice may apply to a particular obligation): low and moderate income housing fund; bond proceeds; reserve balances; administrative cost allowance (see further discussion below); the Redevelopment Property Tax Trust Fund (the fund into which property taxes that formerly were considered redevelopment tax increment will now be placed by the County Auditor-Controller); and other revenue sources (such as rents, concessions, asset sale proceeds, and interest earnings).
- For situations in which the former RDA was administering multiple separate project areas, possibly a column indicating the project area(s) to which the enforceable obligation is attached. (Some County Auditor-Controllers have requested this information on the ROPS; while not statutorily required, it may prove helpful to both the Successor Agency and the County Auditor-Controller to be able to separately track the flow of funds to assure that future property taxes that are attributable to a particular project area are first used to pay bonded indebtedness that had a priority pledge on property taxes from that project area).

The first ROPS must also "project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate such tax increment had such redevelopment agency not been dissolved." One approach to dealing with this one-time ROPS requirement would be to add a column for each fiscal year starting in FY 2012-13 and ending with the last fiscal year in which the last enforceable obligation is scheduled to be fully repaid and indicating the amount due in each fiscal year. For a successor agency dealing with recently issued long-term bonded debt of a former RDA, this approach could become unwieldy and not particularly useful for the bulk of enforceable obligations.

Another possible approach would be to include in the "total outstanding payment amount" column for each enforceable obligation:

- For long-term debt service obligations, a footnote referencing an exhibit to be attached to the ROPS that provides a free-standing debt service schedule listing the date and amount of each scheduled payment (a schedule that is typically readily available for bonded debt obligations).
- For shorter term obligations that might run for a few years at most after the end of the first ROPS period (such as a DDA, OPA, or housing loan agreement containing obligations of the former RDA to make payments to, or produce improvements for the benefit of, an individual developer or

property owner), a footnote that itself sets forth the estimated monetary obligation of the former RDA for each of the few applicable future fiscal years.

2. <u>Enforceable Obligations and Payment Amounts to Include on the First</u> ROPS

The former RDA's most recent EOPS, particularly if it was recently amended to include the January through June 2012 period, can serve as a starting point for the enforceable obligation line items to be included in the first ROPS. Following are some special considerations for adding to and removing items from the EOPS starting-point list of enforceable obligations, and for determining the dollar amounts to be shown for various obligations (which is not intended as an exhaustive list of all possible considerations):

- Affordable Housing Obligations. The housing functions of the a. former RDA have now been transferred to a designated Housing Successor (often the Sponsoring Community), including obligations under affordable housing-related agreements with housing developers, such as DDAs, OPAs, and housing loan agreements. Also, some former RDAs issued tax allocation bonds backed by a pledge of future deposits to the former RDA's low and moderate income housing fund (the "Housing Fund"). Even though the designated Housing Successor technically inherits these types of affordable housing-related obligations, the ROPS should list each of these affordable housing-type obligations as enforceable obligations. In that way, the Housing Successor will be assured of receiving the necessary funding to meet these obligations under the ABx1 26 funding system, either from encumbered portions of the Housing Fund that were initially received by the Successor Agency from the former RDA on February 1, 2012, or from payments received by the Successor Agency from the County Auditor-Controller on May 16, 2012 of amounts the County Auditor-Controller had placed in the Redevelopment Property Tax Trust Fund to pay such enforceable obligations shown on the ROPS. In some cases (like debt service payments on bonds backed by a pledge of Housing Funds), the Successor Agency may use these amounts directly to pay an affordable housing-related obligation shown on the ROPS, while in other cases (such as DDA, OPA, and housing loan agreements), the Successor Agency may turn over the funds needed for payments to the Housing Successor to actually administer the payments.
- b. <u>Unencumbered Bond Proceeds</u>. In some cases, the former RDA had unexpended proceeds from the issuance of bonds (either non-housing or affordable housing bonds) at the time of dissolution. The applicable bond documentation often contains bond covenants to spend the proceeds for redevelopment-related purposes and to take no action that could jeopardize tax-exempt status (if the bonds were issued on a tax-exempt basis). There is some ambiguity in ABx1 26 regarding the path for a Successor Agency or a Housing Successor to spend such unencumbered bond proceeds as contemplated by the bond documentation. To maximize the ability to spend these proceeds as intended, it is recommended that the ROPS contain an independent

enforceable obligation line item (in addition to the debt service payment enforceable obligation related to such bonds) to the effect of "bond proceeds to fulfill legal obligations of tax allocation bond covenants," followed by an identifying reference to the applicable bond issuance date and series. This obligation might be further described as "unspent bond proceeds required by bondholder covenants to be spent for," followed by a brief specification of the intended use under the bond documentation (e.g., affordable housing, or public improvements of benefit to project area).

- c. Other Bond Covenants. The bond documents for outstanding bonds are likely to include various ongoing performance obligations. We suggest that in addition to showing the debt service payments for a particular series of bonds, the ROPS also show expenditures for ongoing professional services such as audit, rebate analysis, disclosure consulting and trustee services either together with the debt service in one line item or in separate lines items. We also recommend that the ROPS make specific reference to the bond indenture and related bond documentation and include a footnote or other indication that the bond documents for the bonds also impose a set of ongoing non-monetized performance obligations in addition to the debt service payment and other monetized obligations.
- d. Payment Obligations Next Arising Outside First ROPS Period. A particular enforceable obligation may have no payments due during the January through June 2012 period covered by the first ROPS, but has payments due in FY 2013-14 or later. Such an enforceable obligation should nonetheless be included on the first ROPS for at least two reasons special to that first ROPS: (1) as noted above, the first ROPS is supposed to show scheduled payments throughout what would have been the debt-paying life of the former RDA had it not been dissolved; and (2) the first ROPS will be certified by the External Auditor, and it will be beneficial for an obligation with payments next due in future periods to be part of the certification process of enforceable obligations.
- e. <u>Contingent Obligations</u>. Some former RDA agreements might have no currently specified payments by the RDA, but contain payment obligations that could arise if certain future conditions come to pass. Examples are DDAs, OPAs, or other development agreements that contain a RDA indemnification if certain future claims arise, or an obligation to share future costs if a certain improvement ultimately costs more than a specified threshold. Bond-related investment agreements like swap agreements or guaranteed investment contracts may also result in payment obligations if specified future market conditions arise. It is advisable to show such contracts with contingent liabilities on the first ROPS even if no currently matured payment obligation exists, perhaps with a footnote explaining the nature of the contingent payment obligation in the place of the total payment amount that can be specified for most types of enforceable obligations.
- f. <u>Debt Service Payments For Fall 2012</u>. Many types of former RDA tax allocation bond issues (or reimbursement agreements with respect to certificates of participation issued to provide funds for improvements benefitting the

redevelopment program) are structured with uneven semi-annual debt service payments. Typically, the spring payment is for a smaller amount representing semi-annual interest only, while the fall payment is for a larger amount that includes both semi-annual interest and annual principal amortization. If the first ROPS only shows actual debt service due in the first half of the year, it is entirely possible that the County Auditor-Controller will release to the taxing entities in May 2012 amounts from the Redevelopment Property Tax Trust Fund not needed to pay enforceable obligations due in the first half of 2012, and then find that there is not enough available in the Trust Fund to fully fund the larger debt service obligations arising in the second half of 2012. To avoid such a catastrophe, the possibility of which is very real given the way the semi-annual ROPS process is written in ABx1 26, it is recommended that the June entry for a tax allocation bond or certificate of participation reimbursement agreement enforceable obligation include the full amount of debt service that will become due on that obligation during the second half of 2012, so that sufficient funds will stay in the ABx1 26 enforceable obligation payment system to assure timely payment of the larger fall 2012 debt service payments. This is a problem noted by, and a reasonable "selfhelp" fix condoned by, the State Department of Finance and several County Auditor-Controllers, in the absence of clarifying legislation to remedy this inherent problem in the ABx1 26 payment system.

- g. Property Remediation Costs. In many cases, Successor Agencies have inherited contaminated properties that may be subject to mandatory clean-up obligations under various state and federal laws or existing contracts. ABx1 26 recognizes obligations imposed by state law and contractual commitments to remediate such properties as enforceable obligations. Even if a formal contract does not yet exist, many Successor Agencies intend to show on their first ROPS an estimate of staff and consultant costs, costs passed through by environmental regulatory agencies, remediation contractor costs and potential litigation costs associated with remediation of these properties. Depending on the stage of the remediation, the Successor Agency may indicate in a footnote that these are contingent liabilities. Inclusion of such property remediation obligations in the ROPS will certainly engender the necessary discussion between a Successor Agency and its Oversight Board regarding the appropriate steps to take in disposing of a contaminated former RDA property in a manner that maximizes its value, as called for in ABx1 26, and that takes seriously the moral (and in some cases, legal) obligation to protect the health and safety of the general public.
- h. <u>Property Management/Maintenance/Insurance Costs</u>. ABx1 26 recognizes as enforceable obligations contracts necessary for the administration or operation of the Successor Agency, which could include existing or future contracts to manage, maintain and insure properties inherited from the former RDA.
- i. <u>Project-Related Staff and Consultant Costs</u>. The first ROPS should carefully distinguish between Successor Agency staff and consultant costs needed for the general administrative functions to comply with ABx1 26 (see administrative cost allowance and administrative budget discussions below), and those needed to actually implement enforceable obligations, such as time devoted to

monitoring and administering rights and obligations of the former RDA under various DDA, OPA, public improvement and other development agreements that are themselves recognized as enforceable obligations. The latter type of staff and consultant costs should be shown as project-related costs payable from the enforceable obligation line for the actual project being monitored and administered, and not in the Successor Agency's general administrative cost allowance line described immediately below. The State Department of Finance has recognized and supported this distinction in preparing the ROPS.

- j. Successor Agency Administrative Cost Allowance. For its general administrative costs, the Successor Agency is entitled to an administrative cost allowance for FY 2011-12 equal to the greater of 5% of the property tax received by the Successor Agency from the County Auditor-Controller to make enforceable obligation payments during FY 2011-12 or \$250,000. This amount may be shown for the February through June 2012 months on the ROPS as an enforceable obligation, although technically the amount is statutorily owed to the Successor Agency in any event. Some Successor Agencies are taking the view that outside consultant costs to assist the Successor Agency in administering the former RDA unwind process should be shown as separate line items on the ROPS to at least engender a discussion with the Oversight Board about how to address such costs. See further discussion below about the Successor Agency's separate, but related, obligation to prepare an administrative budget for Oversight Board approval.
- Sponsoring Community Contracts With Former RDA. Careful k. consideration must be given to the ROPS treatment of contracts between a dissolved RDA and the Sponsoring Community that formed the RDA, many of which contracts are purported by ABx1 26 to have become invalid on February 1, 2012 with the dissolution of the former RDA. ABx1 26 does expressly exempt a limited set of RDA/Sponsoring Community contracts from this invalidity edict, and those exempted contracts should definitely be shown on the first ROPS. Pending legislation (SB 654 and AB 1585) would exempt additional categories of RDA/Sponsoring Community contracts from invalidity, and a lawsuit is pending in Sacramento Superior Court that would invalidate the applicable provision of ABx1 26 on various legal grounds with respect to contracts affecting the Sponsoring Community plaintiffs in that case. Other Sponsoring Communities are considering similar legal actions. In this controversial and uncertain legislative and litigation environment, a significant number of Successor Agencies are considering retaining on their first ROPS other contracts between the RDA and its Sponsoring Community that are not specifically exempted from invalidity. In some cases, the Successor Agency might footnote that the particular RDA/Sponsoring Community contract is being included on the ROPS notwithstanding the ABX1 26 invalidity edict due to pending legislation and litigation issues. Even if a Successor Agency does not show certain RDA/Sponsoring Community contracts in the first ROPS, it should consider including an explanatory caveat that the absence of a particular contract from the ROPS does not in any way waive the legal rights of the Sponsoring Community to challenge the purported invalidity of such contracts under ABx1 26.

3. Administrative Budget Preparation

Each Successor Agency must also prepare an administrative budget for each six-month period for approval by its Oversight Board. This administrative budget must include:

- Estimated amounts for Successor Agency administrative costs for the upcoming six-month period.
- Proposed sources of payment for such administrative costs (which may
 include the administrative cost allowance described in the ROPS preparation
 discussion above, as well as other eligible sources available to the Successor
 Agency).
- Proposals for arrangements for administrative/operations services to be provided to the Successor Agency by the Sponsoring Community or other entity.

ABx1 26 does not specify when the Successor Agency's administrative budget must be prepared and submitted for approval to the Oversight Board. Common sense suggests that the initial administrative budget should be prepared in conjunction with the first ROPS preparation and should cover the period from February through June 2012 (a truncated version of an initial six-month period given the actual timing of RDA dissolution under the Supreme Court decision). By that logic, successive six-month administrative budgets would be prepared and approved in conjunction with each corresponding succeeding six-month ROPS.

The administrative budget should be prepared with the minimum cost allowance to which the Successor Agency is permitted under ABx1 26 in mind (see above for the administrative cost allowance permitted for FY 2011-12). Costs contained in a typical administrative budget of a Successor Agency might include staff costs and related overhead and benefits, costs of materials and equipment, rents, and other costs related to the general implementation of the ABx1 26 system incurred by the Successor Agency.

The costs of Oversight Board meetings are to be borne by the Successor Agency and may be included in the Successor Agency's administrative budget, although it is not stated that such costs count against the Successor Agency's administrative cost allowance. No other costs of the Oversight Board are required or directed to be paid by the Successor Agency.

D. SECOND ROPS

At the risk of sensory, psychic and practical overload, the second ROPS (covering the period July through December 2012) must be prepared and approved by the Oversight Board prior to July 1, 2012. Given the late start for the first ROPS as a result of the timing and outcome of the Supreme Court's decision, this means that work on the second ROPS will probably need to occur while the first ROPS is still proceeding

through its external audit certification and Oversight Board approval process. Some Successor Agencies plan to work on the first and second ROPS simultaneously to give a more comprehensive picture of the full calendar year financial obligations that might better inform the completion of the first ROPS. Other Successor Agencies intend to leave some lag time between preparation of the first and second ROPS to allow for a learning curve with the new Oversight Board that could better inform preparation of the second ROPS.

Oakland Los Angeles San Diego

2012 GOLDFARB & LIPMAN ANNUAL LEGISLATIVE UPDATE

NEW LAWS AFFECTING REAL ESTATE AND COMMUNITY ECONOMIC DEVELOPMENT

Goldfarb & Lipman LLP

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This legislative update is published by Goldfarb & Lipman LLP as a timely reporting service to alert clients and others of recent changes in California law. This legislative update does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.

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On February 1, 2012, all California redevelopment agencies were dissolved. Goldfarb & Lipman invites you to visit our website for the most up-to-date information related to this historic turning point for California real estate development, including expert analysis on the dissolution of redevelopment agencies.

In addition to that fundamental change, other important legislation, unrelated to the dissolution of redevelopment agencies, has been signed into law that will have significant impacts on the real estate development community. The 2012 Annual Legislative Update provides a summary of these new laws. Please feel free to contact any attorney at Goldfarb & Lipman with questions regarding these laws.

I. CONSTRUCTION (PUBLIC/PRIVATE)

A. Payment of Subcontractors—SB 293

Payment of Subcontractors (SB293; amends Business and Professions Code Section 7108.5 and Public Contract Code Section 10262.5).

Beginning January 1, 2012, a prime contractor on both public and private works projects must make payments to subcontractors within seven (7) days of receipt of a progress payment (unless otherwise agreed to in writing). This is consistent with the current 2007 AIA form contracts, which also have a seven (7) day payment requirement. Under prior law, prime contractors had ten (10) days to make such payments. The statutory remedies for violation of this provision remain the same.

B. Public Works Retention—SB 293

Public Works Retention (SB293; adds Section 7201 to the Public Contract Code).

Beginning January 1, 2012, for public works contracts entered into after January 1, 2012, up until January 1, 2016, not more than five percent (5%) retention for any payment may be withheld, with an overall cap on total retention of five percent (5%) of the contract price. There are two exceptions to this new limit: (i) if the public entity makes a finding prior to the bid that the project is "substantially complex", or (ii) if a subcontractor is unable or refuses to furnish payment and performance bonds required by the original contractor.

C. Payment Bonds—SB 293

Payment Bonds (SB293; amends Sections 3252, 8612, and 9560 of the Civil Code).

Beginning January 1, 2012, on both public and private contracts, a payment bond claimant without a direct contractual relationship with the general contractor and who did not serve a 20-day preliminary notice, may still enforce a claim by giving notice to the surety and bond principal within 15 days after recordation of a notice of completion or, if no notice of completion has been recorded, within 75 days after completion of the work. The new provision does not apply, however, to laborers, and claimants who supplied materials or services to a

subcontractor where the subcontractor had a direct contractual relationship with the general contractor and all undisputed progress payments have been made.

D. Subcontractor Indemnities—SB 474

Subcontractor Indemnities (Effective January 2, 2013) (SB474; amends Civil Code Sections 2782 and 2783; adds Section 2782.05).

Although not effective until January 1, 2013, SB 474's changes to indemnification requirements are broad enough that private owners and public entities should begin analyzing its effect on their standard contract documents. SB 474 makes changes to California's antiindemnity statute, addressing the enforceability of "Type I", or broad indemnities that extend to the active negligence of the indemnitee, in both private and public works. Beginning January 1, 2013, provisions in construction contracts that require a subcontractor to indemnify and defend a general contractor, construction manager, or other subcontractor are void to the extent they require the subcontractor to indemnify/defend those persons against their own active negligence or willful misconduct; or for defects in design; or to the extent the claims do not arise out of the scope of work of the subcontractor. This limitation does not apply to residential construction contracts subject to SB800, wrap-up insurance policies, contracts with design professionals and other enumerated exceptions. The new requirement will apply regardless of any provision intending to apply the law of another State. In addition, beginning January 1, 2013, subcontractors or suppliers on a public works project may not be required to indemnify against liability for the active negligence of the public agency. Similarly, a new provision is added making indemnity provisions in private contracts unenforceable if they extend to the active negligence of the owner or its employees.

E. Mechanics' Liens—SB 189

Mechanics' Liens (SB 189; amends multiple sections of the Business and Professions Code, the Civil Code, the Code of Civil Procedure, the Government Code, the Insurance Code, the Labor Code, and the Public Contract Code).

SB 189, which was enacted in 2010, makes comprehensive changes to California's Mechanics' Lien laws, moving, restructuring, and rephrasing many of the requirements. Most provisions will not be effective until July 1, 2012. In short, these changes include: revising the statutory lien waivers; revising notice of completion requirements and the definition of completion; requiring identification of construction lenders in construction contracts; and requiring general contractors to provide 20-day notices. One change effective January 1, 2011, is the requirement that lien claimants serve a Notice of Mechanic's Lien on the owner of the property to be liened before recording the lien in order for the lien to be effective. Due to the significant changes to existing mechanics' lien law, Goldfarb & Lipman will provide a more comprehensive summary of the changes prior to the effective date of SB 189.

F. LLC Contractor License—SB 392

LLC Contractor License (SB 392; amends multiple sections and adds Sections 7071.6.5 and 7071.19 to, the Business and Professions Code, and amends Section 17002 of the Corporations Code).

SB 392 took effect January 1, 2011 allowing limited liability companies to hold a contractor's license under the Contractors' State License Law. Under SB 392, the Contractors State License Board is to have begun processing applications on January 1, 2012.

G. Architect's Liens—SB 424

Design Professional Lien (SB424; adds Section 8319 to the Civil Code).

Under current law a design professional may record a design professional lien notwithstanding the absence of commencement of work. Effective July 1, 2012, a design professional may convert a design professional lien to a mechanics lien provided certain requirements are met, and thereafter enforce that lien as a mechanics lien.

H. Prevailing Wage Violations—AB 551

Prevailing Wage Violations (AB 551; amends Sections 1775, 1776, and 1777.1 of the Labor Code). This bill amends Labor Code Section 1775 to increase the daily penalties for violations of the prevailing wage law as follows:

- 1) \$40-\$200 (previously \$10-\$50) per worker per day unless the error was a good faith mistake and promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- 2) The minimum penalty cannot be less than \$80 (previously \$20) per worker per day if the contractor or subcontractor has failed to pay prevailing wages on another job within the previous three years.
- 3) The minimum penalty cannot be less than \$120 (previously \$30) per worker per day if the Labor Commissioner determines that the violation was willful.
- 4) The minimum penalty for not timely producing certified payroll records increased to \$100 (previously \$25) per worker per day.

AB 551 also provides that any contractor or subcontractor found to have committed two or more willful violations of the prevailing wage law in a three year period shall be barred from bidding or working on a public works project for a three year period. In addition, if a contractor or subcontractor fails to provide certified payroll records within 10 days of request by specified entities, the Labor Commissioner can notify the contractor or subcontractor that if the records are not produced within 30 days of the Labor Commissioner's notice, that contractor or subcontractor will be barred from bidding or working on a public works project for a period of one to three years.

Finally, the bill modifies the rules regarding publication of debarred contractors and subcontractors by requiring the Labor Commissioner to post the list of debarred contractors on the Commissioner's Web site, to notify the Contractors' State License Board whenever the debarment list is updated and to annually notify awarding bodies of the availability of the list of debarred contractors and subcontractors.

I. Compliance Monitoring—AB 436

Compliance Monitoring (AB 436; amends Sections 17250.30 and 81704 of the Education Code, to amend Section 6531 of the Government Code, to amend Section 1771.7 of, to repeal Sections 1771.55, 1771.8, 1771.8, 1771.85, and 1771.9 of, and to repeal and add Sections 1771.3 and 1771.5 of, the Labor Code, and to amend Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3 of the Public Contract Code).

This bill requires certain public works projects to use the Compliance Monitoring Unit ("CMU") of the Department of Industrial Relations ("DIR") to monitor compliance with prevailing wage laws. The covered projects include:

- 1) Any public works project funded in part by state issued bonds other than the 2006 Water project bond initiative.
- 2) Any public work that utilizes a design—build contract where the statute authorizing the use of the design-build method requires use of the CMU.
- 3) Any public works project where the awarding body elects to use the CMU for all of its public works projects.

Projects utilizing a previously DIR-approved Labor Compliance Program or a qualified project labor agreement are not subject to the CMU requirements. Only projects for which the public works contract is awarded on or after January 1, 2012, are subject to the CMU requirements. Awarding bodies must pay a fee for this monitoring work to DIR. The fee cannot exceed 1/4% (0.25%) of the total project costs or of the state bond proceeds provided for the project, whichever is less.

Jurisdictions electing to use the CMU (or other DIR-approved labor compliance program) for all of its public works projects may choose to not require prevailing wages for new construction projects of \$25,000 or less or for demolition, repair, alteration or maintenance projects of \$15,000 or less. Typically, the prevailing wages requirement is triggered for projects with a cost of \$1,000 or less.

J. Project Labor Agreements—SB 922

Project Labor Agreements (SB 922; an act to add Chapter 2.8 (commencing with Section 2500) to Part 1 of Division 2 of the Public Contract Code).

This bill affirmatively authorizes public entities, including local public entities, to enter into a project labor agreement for construction projects, if the agreement includes specified taxpayer protection provisions. This certainly would change the result in several lower level court cases on this issue. SB 922 prohibits a charter provision from preventing the governing board of a local public entity, other than a charter city, from exercising this authority. Commencing on January 1, 2015, if a charter provision prohibits a charter city from consideration of a project labor agreement for a project, then state financial assistance may not

be used to support that project. The delayed effective date for the prohibition on state funding presumably provides the charter city an opportunity to modify its charter if desired.

K. Public Work Volunteers—AB 587

Public Work Volunteers (AB 587; amends Section 1720.4 of the Labor Code).

Labor Code Section 1720.4 exempts the work of volunteers and volunteer coordinators meeting specified conditions from the prevailing wages requirements for public works concluded on or after January 1, 2002. This provision expired on January 1, 2012. AB 587 extends this volunteer exemption from January 1, 2012 through January 1, 2017.

II. LAND USE

A. Mitigation Lands—SB 436

Mitigation Lands (SB 435; amends Section 65965 of, to add Sections 65966 and 65967 to, and to add and repeal Section 65968 of, the Government Code).

This measure establishes detailed standards for the dedication and long-term management of lands used to mitigate the environmental impacts of a development project. These lands could include, for example, wetlands to mitigate loss of wetlands or land used for habitat for endangered species. The statute sets standards for nonprofit organizations that hold title to and manage mitigation lands and allows funds set aside for managing the property to be held by the nonprofit organization owning the property, provided that the organization meets certain standards. The bill was sponsored by the California Council of Land Trusts to allow nonprofits owning mitigation property to also control the endowment established for long-term management of the property.

B. Historical Property – Mills Act Contracts—AB 654

Historical Property (AB 654; amends Sections 50281, 50281.1, 50282, 50284, and 50287 of the Government Code).

Cities and counties are authorized to enter into a contract with owners of historic properties that restrict the use of the property in return for lowered property tax assessments (Mills Act contracts). This bill requires cities and counties to inspect the property before entering into the contract and every five years thereafter. If the owner has violated the contract, the local agency is required to either cancel the contract or take other legal action to enforce it.

C. Housing Element—AB 1103

Housing Element (AB 1103; amends Section 65583.1 of the Government Code).

Cities and counties may meet twenty five percent (25%) of their obligation to designate sites in their housing elements for affordable housing by converting market-rate housing to affordable housing. This bill expands the types of housing that may receive housing element

credit by allowing any foreclosed property converted to affordable to receive such credit. Prior to the passage of AB 1103, only the conversion to affordable of units contained in buildings with three units or more could receive housing element credit. Now, any foreclosed unit, even a single-family home, converted to affordable housing and otherwise meeting the standards in the statute may receive housing element credit.

D. Disadvantaged Unincorporated Communities—SB 244

Disadvantaged Unincorporated Communities (SB 244; amends Sections 56375, 56425, and 56430 of, and adds Sections 53082.5, 56033.5, and 65302.10 to, the Government Code, and adds Section 13481.7 to the Water Code).

This bill requires cities and counties to amend their land use elements to review water, sewer, stormwater, and fire protection needs in unincorporated communities with ten or more dwellings and analyze financing mechanisms that could feasibly be used to extend services to those communities. The amendments must be completed on or before the due date of the next housing element. In addition, the Local Agency Formation Commission (LAFCO) may not approve annexations of more than 10 acres unless any contiguous disadvantaged unincorporated community is included in the annexation. A "disadvantaged unincorporated community" is one where the median income is eighty percent (80%) or less than the statewide median income. Periodic reviews of urban services completed by LAFCO must include the service needs of disadvantaged unincorporated communities.

E. Transit Priority Projects—SB 310

Transit Priority Projects (SB 310; amends Section 53395.14 of, to add Section 53393.3.5 to, and to add Article 9 [commencing with Section 65470] to Chapter 3 of Division 1 of Title 7 of, the Government Code).

This bill allows cities and counties to participate in the Transit Priority Project Program upon adoption of an ordinance expressing the city or county's intent to participate in the program and upon the city or county's establishment of an infrastructure financing district ("IFD") and infrastructure financing plan. The bill further requires the city or county to amend its general plan, if necessary, to authorize a developer to build at a height of a minimum of three stories within the boundaries of the IFD. SB 310 also permits an IFD to reimburse a developer for permits and other expenses incurred in developing affordable housing pursuant to the adopted Transit Priority Project Program, so long as the project meets the rigorous Transit Priority Project Program requirements.

III. CEQA

A. California Environmental Quality Act—SB 226

California Environmental Quality Act (SB 226; amends Section 65919.10 of the Government Code, and amends Sections 21083.9 and 21084 of, and adds Sections 21080.35, 21094.5, 21094.5.5, and 25500.1 to, the Public Resources Code).

This bill will streamline California Environmental Quality Act ("CEQA") compliance for specified infill projects. Environmental review for qualifying projects will be able to bypass analyzing impacts that were already examined at a programmatic level. To be eligible for streamlining, a project will have to meet specified performance standards. This streamlining is intended to augment the existing infill exemptions, and provide a bridge between the current regulatory scheme and the supplemental CEQA relief that will become available pursuant to SB 375 over the remainder of the decade. The Governor's Office of Planning and Research is responsible for promulgating guidelines to effectuate SB 226 and has published its initial draft guidelines and the related statement of reasons (available at http://opr.ca.gov/s_sb226.php).

B. Environmental Quality—AB 320

Environmental Quality (AB 320; amends Sections 21108, 21152, and 21167.6.5 of the Public Resources Code).

This measure modified the Public Resources Code to prevent a CEQA action from being dismissed for failing to name indispensible parties so long as the plaintiff or petitioner names the persons identified in the project's notice of determination or notice of exemption or, if no such notice was filed, the persons referenced in the definition of "project," as reflected in the lead agency's record of proceedings. Previously, the plaintiff or petitioner in a CEQA lawsuit was required to name, as a real party in interest, any recipient of an approval that is the subject of the action or proceeding. Failure to name a recipient of approval that was deemed an indispensible party could be grounds for dismissal. If dismissal occurred after the limitations period expired, courts generally did not allow leave to amend.

IV. SUBDIVISIONS AND CONDOMINIUMS

A. Subdivision Fee—AB 147

Subdivision Map Fees (AB 147; adds Sections 66484.7 and 66484.9 to the Government Code).

This bill amends the Subdivision Map Act to allow a local agency, through adoption of an ordinance, to require payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for the purposes of defraying the costs of constructing transportation facilities defined as pedestrian, bicycle, transit, and traffic calming facilities. The ordinance must meet certain enumerated requirements such requiring a public hearing for the area benefitted.

B. Map Extension—AB 208

Map Extension (AB 208; amends Section 65961 of, adds Section 66452.23 to, the Government Code).

This bill extends by 24 months the expiration date of any approved tentative map or vesting tentative map that has not expired as of July 15, 2011, but will expire prior to January 1, 2014. If a map is extended pursuant to this provision, two limitations apply: (i) the period of

time after recordation of the map during which a city or county is prohibited from imposing new conditions on a building permit is reduced from 5 years to 3 years, and (ii) a city or county is not prohibited from imposing new fees upon the issuance of a building permit.

C. Rental of Condos—SB 150

Common Interest Developments: Limitation on Certain Rental Restrictions (SB 150; amends Section 1368 and 1373 of, and adds Section 1360.2, to the Civil Code).

As of January 1, 2012, this bill limits the enforcement of restrictions on rentals of cooperative, condominium and other common interest development housing units under certain circumstances. Prohibitions on renting units added to the governing documents of a homeowner's association ("HOA") after January 1, 2012, will not be effective against an individual owner unless the restriction was effective prior to the owner purchasing an interest in the common interest development. Owners can consent to be bound by restrictions on rentals that otherwise would not apply to the owner. Also, this bill requires an owner to provide a statement describing any HOA provision that prohibits renting, and its applicability, to a prospective purchaser.

D. HOA Fee Restriction—AB 771

Common Interest Developments: Required Disclosures and fees (AB771; amends Section 1368, and adds Section 1368.2 to the Civil Code).

By adding Section 1368.2 to the Civil Code, this bill creates a new form detailing which documents the seller of a separate interest in a common interest development is required to provide to a prospective purchaser. Among other documents, this bill requires that, upon request, the seller is required to provide the prospective purchaser the minutes from the HOA's regular board meetings conducted over the previous 12 months. The HOA is required to provide a seller a written or electronic estimate of the fees that will be charged for providing the requested documents. The disclosure documents may be maintained in electronic form, and may be posted on the HOA's website. The HOA may collect a reasonable fee for the requested documents, but no additional fees may be charged for electronic delivery of the documents.

E. HOA Meetings Restriction—SB 563

Common Interest Developments: Meetings (SB 563; amends Section 1363, 1363.05 and 1365.2 of the Civil Code).

This bill, known as the Common Interest Development Open Meeting Act, modifies the manner in which an HOA board conducts business and meetings. Specifically, as of January 1, 2012, the Common Interest Development Open Meeting Act eliminates the ability of an HOA board to take actions without a meeting. In addition, except for emergency situations, board decisions are no longer permitted to be made by e-mail. To hold an emergency meeting via e-mail all board members must consent in writing and such consent must be filed with the board meeting minutes. This bill permits HOA board meetings to be conducted via teleconference so long as the teleconference is conducted in a manner that protects the rights of homeowners including that notice of the teleconferenced meeting provide a physical location where members

may attend and at least one member of the board of directors must be present at that location. This bill requires that notice for an executive session meeting be given to HOA members at least 2 days prior to the meeting. In addition, this bill requires the HOA to make available agendas for meetings held in executive session.

F. Vehicle Charging Station—SB 209

Common Interest Developments: Electric Vehicle Charging Stations (SB209; adds Section 1353.9 to the Civil Code).

This bill provides that any prohibition or restriction on the installation, or use, of an electric vehicle charging station in any of the governing documents of a common interest development is void and unenforceable. This bill authorizes an HOA to impose reasonable restrictions on electric vehicle charging stations that do not significantly increase the cost of the station, or significantly decrease the station's efficiency or performance. The bill establishes a process for the HOA's approval for the installation of an electric vehicle charging station. This bill also establishes the duties and obligations of a homeowner in connection with the installation and operation of an electric vehicle charging station, including the homeowner's obligation to maintain an umbrella liability coverage policy of \$1,000,000 which names the HOA as an additional insured.

V. TAX/PROPERTY TAX/TRANSFER TAX

A. Transfer Tax Disclosure—AB 563

Transfer Tax Disclosure (AB 563; adds Section 408.4 to the Revenue and Taxation Code).

Current law permits a county recorder to obtain otherwise confidential information from the county assessor in connection with the county recorder's investigation of whether the documentary transfer tax should be imposed for an unrecorded change in control or ownership of property. This bill provides that designated city employees are now also authorized to obtain such information from the county assessor.

B. Change in Ownership Penalties—SB 507

Change in Ownership Penalties (SB 507; amends Sections 480, 480.1, 480.2, 482, and 483 of the Revenue and Taxation Code).

SB 507 extends the time period for filing the change in control and ownership form with the County Board of Equalization whenever there is a change in ownership or a change in control of an owner of real property from 45 days to 90 days. This bill also designates the County Board of Equalization, instead of the County Board of Supervisors, as the public entity able to abate penalties for late filing of the change of control and ownership form. For single family owners the maximum penalty for late filing was increased to \$20,000. A change in control of an owner of property occurs whenever there is a transfer of more than a 50% interest in the owner entity.

For example, if a limited partnership transfers more than a 50% interest in the limited partnership to another party, then that would trigger a change in control of the owner of the property.

C. Open Space Welfare Exemption—AB 703

Open Space Welfare Exemption (AB 703; amends Section 214.02 of the Revenue and Taxation Code).

This bill extends the inoperative date from January 1, 2012, until January 1, 2022, to allow eligible owners of open space lands the ability to claim property tax exemption.

Such land must be exclusively used for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation and for the enjoyment of scenic beauty.

D. Solar Energy Property Tax Exclusion—ABx1 15

Solar Energy Property Tax Exclusion (ABx1 15; amends Section 73 of the Revenue and Taxation Code).

Existing law excludes a solar energy system from triggering property tax reassessment.

This bill clarifies that the definition of "active solar energy system" to include the completion of the construction of a solar energy system as part of a new property or the addition of a solar energy system to an existing property. This bill also clarifies that this exclusion from reassessment remains in effect until there is a subsequent change in ownership.

E. Tax Delinquents—AB 1424

Tax Delinquents (AB 1424; amends and adds Sections of the Business and Professions Code, Government Code, the Public Contract Code, the Revenue and Taxation Code, and the Vehicle Code).

Beginning on July 1, 2012, a state governmental licensing agency will suspend or refuse to issue or renew a license if the licensee's name is on a certified list of the 500 largest tax delinquencies issued by the State Board of Equalization or the Franchise Tax Board. This bill also prohibits a state agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies.

VI. TITLE/SALES/FORECLOSURES

A. Easements; Property Tax; Tax Defaulted Property—AB 261

Easements; Property Tax; Tax Defaulted Property (AB 261; amends Sections 3712, 3725, and 3731 of the Revenue and Taxation Code).

This bill provides that easements of any kind, including prescriptive easements, survive as encumbrances on property sold at auction for tax-defaults. This bill also changes the

procedural requirements and deadlines for bringing actions to rescind or set aside a tax deed due to alleged invalidity or irregularity. Specifically, the bill requires a person desiring to set aside a tax deed to first petition the board of supervisors of the county within one year of the sale of the property and then requires that person to petition a court to have the tax deed set aside within one year of the county board of supervisor's determination that a tax deed should not be rescinded.

B. Eminent Domain; Conservation Easement—SB 328

Eminent Domain; Conservation Easement (SB 328; amends Section 1240.055 to the Code of Civil Procedure).

This bill provides new procedural requirements to encourage early consultation by parties in eminent domain proceedings regarding the acquisition of property encumbered by a conservation easement by requiring specified notices be given to holders of conservation easements and, under specified circumstances, to the public entities that provided funding for the conservation easement. The bill further entitles the holder of a conservation easement to compensation under the Eminent Domain Law.

C. Foreclosure Notices—SB 4

Foreclosure Notices (SB 4; amends Section 2924f of the Civil Code).

Senate Bill No. 4 requires additional notices to any bidder of a foreclosed home at a trustee sale. In addition, the bill requires the lender to make a good faith effort to notify the homebuyer if a trustee sale is postponed. This bill is effective April 1, 2012, and is applicable to property containing one to four single family residences. Bidders must be advised of the risks of bidding at a trustee sale, which includes the fact that the bidder is bidding on the lien of the lender. In addition, the bidder must be advised that if the bidder is bidding on a junior lien, the bidder may be responsible for paying off the senior lien before the property is free and clear.

This bill provides that a good faith effort must be made to the homebuyer and the public regarding any postponement of a trustee sale. Such efforts may include providing a number to be called regarding the trustee sale or information on the Internet regarding the trustee sale.

D. Short-Sale Deficiency Judgments—SB 458

Short-Sale Deficiency Judgments (SB 458; amends Section 580e of the Code of Civil Procedure).

This bill was enacted on July 11, 2011, and as an urgency bill, was effective immediately. This bill prohibits a holder of the deed of trust from seeking a deficiency judgment in connection with a deed of trust secured against a dwelling unit (not more than four units) in which (i) the unit was sold at a price less than the remaining outstanding indebtedness, and (ii) the holder of the deed of trust provided written consent to such sale and agreed title may be voluntarily transferred by grant deed to a buyer when the proceeds of such agreed upon sale price are tendered. The bill prohibits the holder of the deed of trust from seeking any additional compensation from the seller or trustor.

The trustor cannot be a corporation, limited liability company, limited partnership or political subdivision of the state. The protections provided in this bill are also applicable when the promissory note is secured by both a deed of trust and additional security (i.e. personal property).

The tender of the sale proceeds in accordance with the written consent of the lender shall be treated as if the dwelling unit had been sold by foreclosure under a power of sale. No additional compensation shall be provided from the seller in connection with the sale.

E. Residential Real Property Disclosure—SB 837

Residential Real Property Disclosure (SB 837; amends Section 1102.6 of the Civil Code).

This bill revises a residential real property disclosure form to allow a transferor of residential property (with one to four dwellings) to disclose whether or not the property is equipped with water-conserving plumbing fixtures.

F. Real Property: Marketable Title—SB 284

Real Property: Marketable Title (SB 284; amends Section 880.020 of, and amends, repeals, and adds Section 884.010 of, the Civil Code).

Under current law, if no conveyance, contract, or other instrument that gives notice of an exercise of an option is recorded against real property, the option expires of record: (1) six months after the expiration date specified in the option agreement; or (2) if the option agreement has no expiration date, six months after the date the option agreement is recorded. If the expiration date of a recorded option is not clearly ascertainable, the status of the recorded notice may be determined by relying on off-record information. This bill adds that on or after January 1, 2013, if the expiration date of an option is not ascertainable from the recorded instrument, the document will automatically expire of record six months after the date the option agreement is recorded.

VII. BROKERS

A. Broker Designated Managers—SB 510

Broker Designated Managers (SB 510; amends Section 10165 of, and, adds Section 10164 to Business and Professional Code).

Beginning on July 1, 2012, an employing broker or corporate officer-broker may designate a manager of a branch office or division as the broker responsible for overseeing and supervising that branch office's or division's operations and activities, including staff, broker and salespersons activities, by entering into a written agreement with the manager and sending notice to the Department of Real Estate (DRE). The designated manager may not hold a restricted license, be subject to debarment, or have less than 2 years of full-time real estate experience within 5 years prior to being designated. The DRE must be immediately notified in writing when a designated manager is terminated or changed. The DRE may suspend or revoke the

license of a designated manager for failing to properly oversee and supervise the branch office's or division's operations and activities.

B. Greater DRE Oversight—SB 706

Greater DRE Oversight (SB 706; amends and adds sections to the Business and Professional Code).

Beginning January 1, 2012, the DRE must post on the Internet the status of suspensions and revocations of licenses and may enter into a settlement agreement with brokers and salesperson being investigated. Licensees will be required to report any information regarding a felony charge or indictment, conviction of a felony or misdemeanor, and any other disciplinary action against the licensee and the license or endorsement of an incarcerated felon will be automatically suspended. Violators may be required to pay penalties, the reasonable costs of an investigation and enforcement, or monetary costs associated with monitoring a restricted license or endorsement. If an outstanding judgment against a broker/salesperson is paid under the newly created Consumer Recovery Account, the subject license will be automatically suspended on the date of payment until the paid amount is reimbursed with interest. In addition, beginning on January 1, 2013, as part of the renewal process, licensees must take a course related to federal and state appraisal laws.

C. DRE Fines and Reporting—SB 53

DRE Fines and Reporting (SB 53; amends and adds sections to the Business and Professional Code).

Beginning January 1, 2012, the DRE may cite and fine both unlicensed persons and licensees that violate broker/salesperson laws and regulations. Each fine may include an administrative fine not to exceed \$2,500. These sanctions are in addition to all other administrative, civil, or criminal penalties. The DRE may, on its own, or must, upon receipt of a written verified complaint, investigate the actions of a licensee. The DRE may disclose to the public information regarding an investigation or proceeding of a licensee or unlicensed person. Beginning July 1, 2012, brokers who engage in escrow activities for 5 or more transactions in a calendar year pursuant to an exemption under the Escrow Law or whose exempted escrow activities equal or exceed \$1,000,000 must file an annual report with the DRE or be subject to penalties. There are additional notice requirements for brokers conducting qualified or exempt transactions under the Corporations Code. The DRE may suspend or revoke, delay renewal, or deny issuance of a license for violating new conduct requirements, such as demonstrating negligence or incompetence in performing a licensed act.

D. Appraisal and Valuation—SB 6

Appraisal and Valuation (SB 6; amends Civil Code Section 1090.5 and amends and adds to Business and Professional Code and Civil Code).

Beginning January 1, 2012, brokers and salespersons are expressly prohibited from knowingly or intentionally misrepresenting the value of real property or having a prohibited interest in property in which they offer or provide an opinion of value in connection with the

origination of a mortgage loan. In addition, an appraisal management company or person with an interest in a real estate transaction is prohibited from improperly influencing any appraisal. A person/entity preparing an appraisal or performing appraisal management functions is also prohibited from having an interest in the property or transaction.

VIII. MULTIFAMILY HOUSING—TENANTS

A. Landlords Required to Arrange for Recycling Services—AB 341

Landlords Required to Arrange for Recycling Services (AB 341; amends the Public Resources Code by adding Sections 42649.1 and 42649.2, among other sections).

This bill requires multifamily residential dwellings with five or more units to arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement applicable to the collection, handling, or recycling of solid waste to the extent such services are offered and reasonably available from a local provider. Landlords may require tenants to "source separate" their recyclable materials to aid in recycling program.

B. Rental Dwellings; Smoking—SB 332

Rental Dwellings; Smoking (SB 332; adds Section 1947.5 to the Civil Code).

This bill authorizes landlords of residential dwelling units to prohibit smoking on the residential property, in individual dwelling units, in an interior or exterior area, or on the premises on which the dwelling units are located. All leases or rental agreements entered into after January 1, 2012, for dwelling units on property on any portion of which the landlord has prohibited smoking must include a provision that specifies the areas on the property where smoking has been prohibited. A landlord who exercises the authority to ban smoking pursuant to SB 332 must comply with federal, state, and local requirements governing changes to the terms of lease or rental agreements, including providing existing tenants written notices in the manner prescribed in Civil Code Section 827.

C. Tenants Allowed to Post Political Signs—SB 337

Tenants Allowed to Post Political Signs (SB 337; amends the Civil Code by adding Section 1940.4).

In general, landlords cannot prohibit tenants from posting or displaying political signs relating to (1) elections or legislative votes, (2) the initiative, referendum or recall process, or (3) issues before a public board or agency. Landlords may prohibit such signs if a sign is more than 6 square feet or the posting of a sign would violate a local, state or federal law or a lawful provision in CC&Rs. The signs must be posted in compliance with any time limits set forth in a local ordinance or, if no such ordinance exists, the landlord may establish a reasonable time period for the posting, which is defined as beginning at least 90 days prior to the date of the election or vote to which the sign relates and ending at least 15 days thereafter.

IX. MULTIFAMILY HOUSING—FINANCE

A. HCD/EHAP—AB 221

HCD/EHAP (AB 221; amends Sections 53533 and 53545 of the Health and Safety Code).

This bill provides that funds deposited into the Emergency Housing and Assistance Fund Program could be utilized by the Department of Housing and Community Development ("HCD") for supportive housing under the Multifamily Housing Program. Supportive housing projects help serve individuals and households who are at risk of homelessness or currently living in transitional housing or emergency shelters.

B. Supportive Housing—AB 483

Supportive Housing (AB 483; amends Section 50675.14 of the Health and Safety Code).

This bill modifies certain provisions in the Multifamily Housing Program – Supportive Housing Program. This bill revised the term "targeted population" and makes several changes to the information a borrower must include in its annual report to HCD. The bill also imposes new requirements with respect to populations served by the supportive housing program.

X. PUBLIC AGENCIES MEETINGS

A. Meeting Compensation Disclosure—AB 23

Meeting Compensation Disclosure (AB 23; amends Section 54952.3 to the Government Code).

This bill authorizes a convened legislative body whose membership constitutes a quorum of any other legislative body to convene a meeting of the subsequent legislative body simultaneously or serially, only if a verbal announcement is made of the amount of compensation or stipend, if any, that each member will be entitled to as a result of convening the meeting of the subsequent legislative body. The announcement is not required if the amount of compensation is prescribed by statute and no additional compensation has been authorized by a local government agency.

B. Executive Contracts/Brown Act—AB 1344

Executive Contracts/Brown Act (AB 1344; amends Sections 9255 and 9260 of the Elections Code, and amends Sections 34457, 34458, 54954.2, and 54956 of, to add Section 34458.5 to, to add Article 2.6 [commencing with Section 53243] to Chapter 2 of Part 1 of Division 2 of Title 5 of, and to add Chapter 10.1 [commencing with Section 3511.1] to Division 4 of Title 1 of, the Government Code).

1) <u>City Charter or Charter Amendment</u>. This bill requires the submission of a city charter or charter amendment, whether submitted to the voters by a charter commission or the

governing body of a city or city and county, to be submitted at the next established statewide general, statewide primary, or regularly scheduled municipal election date, provided there are at least 95 days before the election. The bill also requires that a proposal to adopt a charter to include in the ballot description an enumeration of new city powers as a result of the adoption of the charter, including whether the charter, if adopted, will give the city council the power to raise its compensation and the compensation of other city officials without voter approval.

- 2) <u>Government Employment Contracts</u>. This bill prohibits an employment contract for a local government agency executive from providing automatic renewal of the contract that provides for an automatic increase in excess of the cost of living or a maximum cash settlement in excess of certain specified limits.
- Reimbursement if Convicted of Abuse of Office. This bill requires a contract between a local government agency and an employee or officer of the agency to include a provision that requires that if the officer or employee is convicted of a crime involving an abuse of his or office, then such individual must fully reimburse the local agency for specified payments made by the local agency to the officer or employee.
- 4) <u>Posting Agenda on Website</u>. This bill requires a local government agency to post notice of the agency's meetings on its website, if it has one. It also prohibits consideration of an agency executive's compensation at a special meeting.

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LAW ALERT

REDEVELOPMENT DISSOLUTION: SUCCESSOR AGENCY NEXT STEPS FOR MARCH – MAY 2012

By now, the successor agency ("Successor Agency") for each former redevelopment agency ("Former RDA") has likely prepared, obtained its governing board's (typically the city council or board of supervisors) approval, and posted on its website the draft first recognized obligation payment schedule ("First ROPS") providing specified information about the Former RDA's enforceable obligations for the period of January through June 2012 (and over the duration of such obligations), in accordance with the provisions of ABx1 26 ("Dissolution Act").

This alert provides information about actions to be taken by the Successor Agency during the balance of March through May to complete the certification and approval process for the First ROPS and related Successor Agency administrative budget ("Administrative Budget") and to prepare and process the

second recognized obligation payment schedule ("Second ROPS") and related Administrative Budget covering the period of July through December 2012. This alert also describes actions to be taken by the county auditor-controller ("Auditor-Controller") in connection with making payments to the Successor Agency from the Redevelopment Property Tax Trust Fund ("Trust Fund") established by the Auditor-Controller for each Former RDA to provide the Successor Agency with funds to pay enforceable obligations of the Former RDA for the periods covered by the First and Second ROPS. Click here for full law alert.

For more information please call Jack Nagle, Lynn Hutchins, Rafael Yaquian, and Josh Mukhopadhyay or any other attorney at Goldfarb & Lipman at 510-836-6336.

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MARCH 23, 2012

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LAW ALERT

DOCUMENTING ASSET/OBLIGATION TRANSFERS OF FORMER RDAS: EXIT MEMOS AND JOINT MOUS

Goldfarb and Lipman's January 19, 2012 law alert ("The Final Actions of Redevelopment Agencies and the Set-Up of Successor Agencies," available at this link, recommended that, by the end of January 2012, redevelopment agency staff prepare two internal memoranda to provide guidance to the entities that would assume agency assets and obligations after the February 1 dissolution event. One memorandum would be intended for the housing successor and would list the housing assets and obligations currently held by the redevelopment agency that would be conveyed to the housing successor. The other memorandum would list all other redevelopment agency assets and obligations that were to be assumed by the successor

In the event that a former redevelopment agency did not complete such "exit memos," it may still be valuable for the successor agency and housing successor to enter into a joint memorandum of understanding that categorizes the assets and obligations of the former redevelopment agency in the manner described above. In the event that particular circumstances make it difficult to easily characterize an asset or obligation, the memorandum should list the pertinent facts and explain the reasoning behind each categorization decision. Examples of difficultto-classify assets and obligations include (i) property purchased with a mix of 20% funds and 80% funds and (ii) DDAs and OPAs for

mixed use projects. With the exception of encumbered 20% funds, the various assets and obligations of a former redevelopment agency should be considered to have already been divided and conveyed to the successor agency and housing successor as set forth in the exit memos or joint MOU, with the conveyance having taken place on February 1, 2012 under operation of ABx1 26 without grant deeds or any other conveyance agreements. It is unclear whether encumbered 20% funds were automatically conveyed to the housing successor or if they must be temporarily held by the successor agency until ordered transferred by the oversight board. Specific examples of assets and obligations to include in exit memos or a joint MOU include:

- Real property
- Personal property
 - o Encumbered asset balance
 - Unencumbered asset balances
- Bond obligations
- Contract rights and obligations

These suggestions are only a brief summary of the context-specific advice we have prepared for individual clients. It should not be relied upon as legal advice or as a complete and accurate summary of this aspect of ABx1 26. To that end, for more information or advice please contact your entity or organization's legal counsel.

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April 27, 2012

Michael Huntley Planning and Community Development Director City of Montebello 1600 W. Beverly Blvd. Montebello, CA 90640

Re: <u>Request for Proposal (Legal Services) on behalf of the Oversight Board for the</u>

Successor Agency to the Montebello Redevelopment Agency (Ernesto G. Hidalgo

Email of April 26, 2012)

Dear Mr. Huntley:

MARK HUEBSCH

DIRECT DIAL: (949) 725-4167

MHUEBSCH@SYCR.COM

Following receipt of an email on April 26, 2012 from Ernesto G. Hidalgo (the "RFP"), I am providing this proposal to provide advisory services to Members of the oversight board (the "Oversight Board") to the Successor Agency to the Montebello Redevelopment Agency (the "Redevelopment Agency") in connection with the dissolution of the Redevelopment Agency.

<u>Basic Scope of Services</u>. This law firm (the "Firm" or "We") proposes to provide legal services to the Oversight Board for the successor agency to the Redevelopment Agency in connection with the dissolution of the Redevelopment Agency. I would be the lead attorney for the Firm.

In terms of basic legal services, We would provide advice to the Oversight Board and its members. Because of the very nature of ABx1 26 (the "Dissolution Act") in dissolving redevelopment agencies and setting forth certain rules for the conduct of the wind-down of former redevelopment agencies, We anticipate that certain waivers may be necessary and appropriate to be given by oversight board members and corresponding member agencies with regard to potential or actual conflicts of interest. For example, taxing agencies, such as a county, a city or a school district, may take different positions regarding such arrangements as loans between a host city and its redevelopment or the ongoing effect or interpretation of a pass-through agreement between a redevelopment agency on the one hand and a taxing agency, such as a school district or a water district, on the other hand. We would anticipate providing advice and being available as a resource to the oversight board on such matters as arise and concerning basic requirements such as applicability of the Political Reform Act, consideration and approval

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of a Recognized Obligation Payment Schedule and considering proposals for the disposition of the real property of a former redevelopment agency.

Given the unprecedented and untested nature of the Dissolution Act, it is not possible to predict parameters for what issues will arise and will need to be addressed. In that regard, various bills have been proposed (SB 654 [Steinberg] and AB 1585 [Perez] being examples) which could affect the conduct of business by oversight boards.

Experience with Redevelopment and the Dissolution Act. As a law firm, We have for several years enjoyed an active practice representing redevelopment agencies in all phases of activities, including plan adoptions, plan amendments, redevelopment financing (as bond counsel), negotiation and preparation of virtually any kind of transaction documents for redevelopment agencies (such as disposition and development agreements, owner participation agreements, affordable housing agreements), the conduct of litigation concerning redevelopment agencies and activities (generally on behalf of redevelopment agencies but occasionally, concerning matters of contract, on behalf of other governmental agencies adverse to particular redevelopment agencies). The Firm's redevelopment clients have included redevelopment agencies in Anaheim, Berkeley, Buena Park, Burbank, Calexico, California City, Ceres, Chula Vista, Claremont, Clovis, Coronado, Costa Mesa, Cotati, Dinuba, El Cajon, El Centro, Escondido, Fontana, Garden Grove, Glendora, Grand Terrace, Highland, Lafayette, Lancaster, Lemoore, Lindsay, Lodi, Loma Linda, Los Banos, Mission Viejo, Monrovia, Montclair, Moreno Valley, Oceanside, Ridgecrest, Ripon, Riverside (City), Riverside (County), Rohnert Park, San Juan Capistrano, Simi Valley, Soledad, Upland, Vista and Yucaipa. I have been active in the representation of redevelopment agencies, on a regular basis, of Glendora, Highland, Loma Linda, Los Banos, Moreno Valley, Simi Valley, Soledad and Yucaipa, as well as preparing agreements or occasionally advising other agencies. The Firm has been one of the leading bond counsel firms within the State of California as measured by number of issues and dollar volume; one of the active areas in this regard has been redevelopment financing (tax allocation bonds), as well as other forms of public financing, including lease revenue bonds, revenue bonds (for enterprise activities) and certificates of participation. My involvement in that work is further described in the enclosed resume. The breadth of the Firm's and my involvement can be helpful in bringing to bear a broad range of experience to the oversight boards.

For additional information concerning my background, please refer to my resume (Exhibit "A") and for the Firm see Exhibit "B."

With the passage of the Dissolution Act and the onset of wind-down activities, I have been actively representing several redevelopment agencies concerning their activities under the Dissolution Act, including with respect to basic foundational activities (such as designating a regular time and place for meetings or adopting a conflict of interest code), considering protocols for dealing with the disposition of former redevelopment agency properties, and providing advice concerning contractual arrangements, often including agreements between a former redevelopment and its host city. I have also provided advice to certain taxing agencies in

City of Montebello April 27, 2012 Page Three

geographical areas where neither I nor others in this Firm represent or represented the former redevelopment agency involved; such representation of other, non-city taxing agencies has included school district and special district representation.

Members of the public law department are recognized experts in their areas and are often called upon to speak at seminars for public agencies and other municipal finance specialists, including seminars held by the California League of Cities, the (former) California Redevelopment Association (CRA), the National Association of Bond Lawyers, the Community College League of California, the California Debt and Investment Advisory Commission, the Association of California Water Agencies, the Coalition for Adequate School Housing, the California Special District Association, The Bond Buyer, and others.

Because of the depth of the experience of this Firm, including me, concerning both the California Community Redevelopment Law and how redevelopment agencies operated, I believe that I can provide useful advice to an oversight board. In addition to the foregoing experience, as touched upon in the enclosed resume, I have participated in seminars, as conducted by the former California Redevelopment Association and the California Society of Municipal Finance Officers (CSMFO) regarding redevelopment and the Dissolution Act. For the past several months, I have been an active and participating member of the Implementation Subcommittee of the CRA Technical Committee. In that capacity, I participated in analyzing the Dissolution Act in some depth, contributing to advice letters or memoranda, as well as speaking at the seminar on the Dissolution Act which CRA conducted in Ontario in March of this year.

<u>Fees; Billings</u>. As the nature and scope of the respective engagements does not lend itself to an overall-fixed-price approach, We would charge for our services on the basis of hourly rates. The basic hour rates charged would be \$285 per hour for shareholders and \$225 to \$250 per hour for associates, depending upon the level of experience. Paralegal time, if any, would be billed at \$115 per hour. I anticipate that I would be the attorney primarily working on these matters. In the event litigation were to occur and the services of this Firm are utilized for such services, hourly rates would be \$340 per hour for shareholders and \$275 per hour for associates, with paralegal time being billed at \$115 per hour. In the event We are called upon to provide services concerning financings, hourly rates would be \$425 per hour for shareholders and \$325 per hour for associates.

We normally bill at thirty (30) day intervals, with payment expected within thirty (30) days of each bill. We would request that some reasonable form of assurance be provided that We would be paid from an entity or entities which have funds available for such purposes. In that regard, we suggest that some thought be given to either (i) assurance that the City will pay for our services as provided to the Oversight Board, without regard to whether such agreement for services is permitted to be included on the Recognized Obligation Payments Schedule(s) of the Successor Agency, or (ii) one or more taxing agencies represented on the Oversight Board agree to remit payment for our services as provided to the Oversight Board. The determination

City of Montebello April 27, 2012 Page Four

of the exact entity providing payment may cause some revision to the Terms of Retention (see below) but the basic concepts would be as described in this paragraph.

<u>Form of Agreement for Services</u>. We are enclosing a form of agreement for services, (the "Terms of Retention", enclosed as Exhibit "C").

Given the unprecedented nature of oversight boards and rather unpredictable course of work, it may be difficult to delineate with much specificity what work will be encompassed within the corresponding agreement for legal services. Accordingly, We would suggest generally that work to be undertaken as directed by the Oversight Board.

Additional Comments and Disclosure. Several years ago, I represented a company which was associated with the operation of mall know known as The Shops at Montebello. Based upon a discussion with Mr. Hidalgo, my understanding is that some payments may continue to be scheduled to one or more private parties. I have not had contact in several years with the private party. Apart from that particular example, I am not aware of other instances in which We have represented either (i) the City of Montebello or the Redevelopment Agency (collectively, "Montebello") or (ii) an entity adverse to Montebello in any activity or transaction involving Montebello. I am not aware of active representation that a member of this Firm engages in with regard to entities which are members of the Oversight Board. In the event I become aware of any other circumstances that would require disclosure or waivers, I will bring these to your attention.

Thank you for the opportunity to be considered. If there is additional information which may be useful to you in considering this submittal, let me know and I will address your request.

Very truly yours,

STRADLING YOCCA CARLSON & RAUTH

Mark J. Huebsch

MJH:rn Enclosures

cc: Ernesto G. Hidalgo

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The undersigned hereby agrees that the terms and conditions in this letter and the accompanying Terms of Retention shall apply to services rendered by Stradling Yocca Carlson & Rauth.

CITY OF MONTEBELLO	
By:	
City Manager	
Dated:, 2012	

EXHIBIT A

RESUME

MARK HUEBSCH

<u>EDUCATION</u> University of Southern California

(AB, Magna Cum Laude, 1972)

Phi Beta Kappa

University of California at Los Angeles

(JD, 1975)

ADMITTED TO BAR 1975 – California; 1977 - U.S. District Court Central

District of California

EMPLOYMENT 1975-1978 Deputy County Counsel

County of Kern

1978 - 1981 Deputy/Assistant City Attorney

City of Costa Mesa

1981 - 1983 Attorney, McDonough, Holland & Allen

1983 - Present Attorney, Stradling Yocca Carlson & Rauth

(Shareholder since 1986)

<u>SPEAKER</u> Implementation of ABx1 26

California Redevelopment Association (CRA), Ontario (March

2012)

California Society of Municipal Finance Officers (CSMFO)

Conference, Monrovia, 2012 CSMFO Conference, Tustin, 2012

Redevelopment as Tool for Change (League of California Cities: 2000)

Basic Redevelopment Tools; Advanced Redevelopment

(MMASC: 2000)

Structuring Business Grant & Loan Programs

(CRA: 7 presentations)

Introduction to Redevelopment

(CRA: 4 presentations)

REFERENCES Josh Betta, Finance Director, City of Glendora

Brooke McKinney, Finance Department, City of Moreno Valley

Diana de Anda, Finance Director, City of Loma Linda

(additional references available upon request)

EXHIBIT A
PAGE 1 OF 1

EXHIBIT B

BACKGROUND INFORMATION CONCERNING STRADLING YOCCA CARLSON & RAUTH, A PROFESSIONAL CORPORATION, AND MARK J. HUEBSCH

EXPERIENCE

Profile of the Firm

Stradling Yocca Carlson & Rauth (the "Firm") was formed by four attorneys in 1975, and has grown to be one of the largest law firms in Orange County, with offices in San Francisco, Santa Barbara and Sacramento. Our primary areas of specialization are public finance, public law, tax, general corporate law, corporate securities, real estate, litigation, labor, estate planning and pension and profit sharing. While the majority of our clients are headquartered here in California, the Firm represents a wide variety of United States and foreign clients in connection with their activities across the nation and around the world. The Firm has substantial depth and breadth of experience representing cities and redevelopment agencies in connection with the development and revitalization of commercial centers and business areas. The Firm's experience in public finance and in the implementation of redevelopment projects provides us with a broad perspective which we believe is of assistance to clients.

Twenty-three members of the Firm practice in the areas of public finance and general public law, making us one of the larger firms in the state in the public law field. Our public law attorneys devote their time overwhelmingly to the representation of the interests of public agencies, including cities, counties, redevelopment agencies, school districts, and special districts of various kinds, and to the supplying of legal services in connection with the financings of such agencies.

The Firm has been involved in nearly every type of financing undertaken by public agencies and has helped to develop several of the structures which are widely used throughout the country. We have utilized fixed and various variable rate financing techniques to provide low interest rates on public projects. We address unique financing problems by our solutions-oriented approach to working with issuers and other financing team members.

We believe that the Firm's size offers an advantage to our public finance clients. First, the Firm has expertise in many areas, such as real estate, corporate securities, litigation, as well as general public law, that can be useful in analyzing all relevant issues for a bond financing. Second, our size provides stability and assurance to the client that the Firm will be in practice to follow up on matters related to the services it renders.

The Firm is a perennial leader in public finance in California. For more than 15 years, we have consistently been ranked among the top 5 bond counsel firms in the State, and most years have been ranked among the top three, both in terms of dollar volume and number of transactions. In addition, the Firm was ranked as the Number 3 disclosure counsel firm in the United States in 2011 and the Number 6 bond counsel firm in the State of California (the "State") in 2010, the latest years for which such information is available. Additional historical information regarding the Firm is depicted in the table below:

CALIFORNIA BOND COUNSEL RANKINGS

Year	Dollar Volume (in Millions)	Rank	Number of Transactions
2010	\$3,712	3	186
2009	5,806	2	116
2008	4,730	2	94
2007	5,337	3	156
2006	5,307	3	191
2005	6,549	2	279

Due to the volume and complexity of the transactions the Firm has participated in, the Firm has a breadth of knowledge and experience in all areas of municipal financing and has participated in just about every form of available financing structure, including, but not limited to, taxable and tax exempt tax allocation financings for housing and non-housing projects, lease revenue, 501(c)(3) financings and multifamily housing transactions, revenue secured utility financings, general fund lease revenue financings, derivative transactions, assessment district and Mello-Roos financings and revenue financings.

Redevelopment

The Firm is one of the most prominent in the State in terms of its redevelopment practice. The Firm has represented over 40 redevelopment agencies as special counsel dealing with all aspects of the Redevelopment Law. These services have included both work on bond issues and general matters.

Firm redevelopment clients have included agencies in Anaheim, Berkeley, Buena Park, Burbank, Calexico, California City, Ceres, Chula Vista, Claremont, Coronado, Costa Mesa, Cotati, Dinuba, El Cajon, El Centro, Escondido, Fontana, Garden Grove, Glendora, Highland, Lancaster, Lemoore, Lindsay, Lodi, Loma Linda, Los Banos, Mission Viejo, Monrovia, Montclair, Moreno Valley, Oceanside, Ridgecrest, Ripon, Riverside County, Rohnert Park, San Juan Capistrano, Simi Valley, Soledad, Upland, Vista and Yucaipa.

In our capacity as special counsel to redevelopment agencies generally, we became familiar with allocating the housing portion of projects to the housing set aside fund. We also have experience with non-bonded indebtedness, including structured loans and other arrangements.

A partial listing of financings involving Mark Huebsch includes: (a) bond financings for the redevelopment agencies of: (i) Arcadia (2001 Tax Allocation Bonds, Series A, \$11,635,000; 2001 Taxable Tax Allocation Bonds, Series B, \$9,240,000); (ii) Bellflower (2004 Taxable Tax Allocation Refunding Bonds, \$7,815,000); (iii) Cotati (2001 Subordinate Tax Allocation Bonds, Series A, \$6,960,000; 2001 Subordinate Tax Allocation Bonds, Series B, \$1,100,000; 2004 Tax Allocation Refunding Bonds, \$5,610,000); (iv) Fontana, 2007 Tax Allocation Bonds, Sierra Corridor, \$41,000,000); (v) Glendora (1993 Tax Allocation Bonds, 1993 Series A, \$13,390,000; 1998 Series A Refunding Loans, \$7,570,000; Glendora Public Financing Authority, Project No. One Tax Allocation Bonds, \$11,255,000, 2003 Series A, and Series B [Taxable] \$4,815,000); (vi) Imperial Beach, Tax

Allocation Bonds, 2003 Series A, \$22,765,000; (vii) Los Banos, 2004 Taxable Tax Allocation Bonds, \$3,500,000; (viii) Oakley, Taxable Tax Allocation Bonds, Series 2003, \$8,500,000; (ix) Pismo Beach, 2001 Refunding Tax Allocation Bonds, \$1,795,000; (x) \$37,535,000 Ontario Redevelopment Financing Authority, 2007 Lease Revenue Bonds (Capital Projects); (xi) Santa Ana, Tax Allocation Bonds, Series 2003A, \$20,945,000 and Series B Refunding Bonds, \$34,145,000 [as underwriter's counsel]; (xii) Simi Valley, Tax Allocation Refunding Bonds, \$32,000,000; (xiii) Union City, Tax Allocation Refunding Bonds, 2003, \$16,600,000.

Not included in the above list are other financings, many of which have involved indirect support from the redevelopment agency. Other financings for which Mark Huebsch has actively participated include Moreno Valley Lease Revenue Bonds, \$48,700,000, 2005; Moreno Valley Lease Revenue Bonds, \$26,765,000, 2007; Fontana Public Financing Authority, 2007 Lease Revenue Bonds, \$54,550,000. The foregoing are examples where tax increment moneys will be made available to defray a portion of construction of public improvements, but where such revenues are not directed pledged to bonds. Other financings not listed above have included revenue bonds (including the issuance of hospital revenue bonds in the principal amount of \$158,345,000), additional hospital revenue bonds in the approximate principal amount of \$150,000,000, \$80,000,000 and \$40,000,000, certificates of participation, general obligation bonds, the issuance of fixed and/or variable obligations to refinance auction rate securities, and other obligations).

Certificates of Participation/Lease Revenue

We have extensive experience acting as bond counsel on both general fund certificates of participation and lease revenue bond financings. Recently, the undersigned have closed general fund supported financings for the Cities of Simi Valley, Salinas, Escondido, Riverside, Oceanside and Malibu. The Firm has completed general-fund supported lease financings for many other school districts, special districts, cities and counties in the past five years. Our certificates of participation financings have involved a variety of financing structures, including variable and fixed interest rates, project-backed financings, asset transfers, credit-enhanced and non-credit-enhanced structures, interest rate swap agreements, as well as city leases augmented by redevelopment agency revenues. From 2006 to 2009, we were bond counsel on 122 lease revenue certificates of participation or lease revenue bond financings totaling over \$6.3 billion.

The Firm has substantial real estate experience in connection with lease financings and also has a broad real estate practice representing buyers, sellers, borrowers and lenders. From a general real estate perspective, we are experienced in evaluating all aspects of title in the lease-leaseback process. We advise many local issuer clients with respect to real estate matters. With respect to this process, we are knowledgeable in title insurance matters, including the required endorsements that would be needed by the City in connection with its acquisition of property.

PERSONNEL

Mark Huebsch has been a shareholder (partner) at Stradling Yocca Carlson & Rauth since 1986, after joining the firm in 1983. Mr. Huebsch has specialized in public law his entire legal career, with particular emphasis on redevelopment law since 1981, following graduation from the UCLA Law School in 1975, and obtaining an A.B. degree (major in history) from the University of Southern California (magna cum laude) in 1972. He has an "AV" rating in the Martindale-Hubbell Law Directory. His prior employment has included service as Deputy City Attorney, and then

Assistant City Attorney with the City of Costa Mesa, as well as Deputy County Counsel of the County of Kern.

More recently, Mr. Huebsch was the attorney with principal responsibility for redevelopment legal matters for the redevelopment agencies of the cities of Glendora, Highland, Loma Linda, Los Banos, Moreno Valley and Yucaipa. In each case, the representation is as special counsel, with other counsel acting as City Attorney. Mr. Huebsch has been a program presenter for the California Redevelopment Association ("CRA") at several Introduction to Redevelopment Programs, including programs dealing with both implementation and redevelopment plan adoptions, and a program (offered nine times by CRA) on Structuring Business Grants and Loans and, more recently, presentations concerning redevelopment dissolution at events sponsored by the California Redevelopment Association and the California Society of Municipal finance Officers..

REFERENCES

The following individuals may be contacted as references regarding Mr. Huebsch; additional references available upon request:

Mr. John Herrera Herrera & Associates (former Finance Director, City of Imperial Beach; City of Pico Rivera) 3770 Orange Street Riverside, CA 92501 (619) 271-1645 Mr. Josh Betta Finance Director City of Glendora 116 East Foothill Blvd. Glendora, CA 91741 (626) 914-8241

Mr. T. Jarb Thaipejr, City Manager Ms. Pamela Byrnes-O'Camb, City Clerk City of Loma Linda 25541 Barton Road Loma Linda, CA 92354 (909) 799-2819

Mr. Blair King City Manager City of Coronado 1825 Strand Way Coronado, CA 92118 (619) 522-7335

EXHIBIT C

TERMS OF RETENTION OF STRADLING YOCCA CARLSON & RAUTH

1. <u>Fees and Costs</u>. Stradling Yocca Carlson & Rauth is compensated for its services based primarily on the value of the services and the time spent performing them. This includes the time spent on conferences, court appearances, depositions, travel, research, drafting documents, and other activities. The basic hour rates charged would be \$285 per hour for shareholders and \$225 to \$250 per hour for associates, depending upon the level of experience. Paralegal time, if any, would be billed at \$115 per hour. In the event litigation were to occur and the services of this Firm are utilized for such services, hourly rates would be \$340 per hour for shareholders and \$275 per hour for associates, with paralegal time being billed at \$115 per hour. In the event We are called upon to provide services concerning financings, hourly rates would be \$425 per hour for shareholders and \$325 per hour for associates. These rates are modified from time to time. An advance retainer is required for all new matters. Mileage will be billed at the rate established from time to time by the Internal Revenue Service.

The amount of fees charged on a statement is determined by starting with the hours expended by the different attorneys and other professional personnel involved. These amounts are then adjusted for factors such as the extent of any duplication of attorney effort, unusual efficiency (or lack of efficiency), the novelty or difficulty of the issues involved, the time demands of the representation, and unusually good (or unusually disappointing) results.

The firm also charges for various costs such as copying, telephone charges, computerized legal research, word processing and/or other computer time, overtime costs, messenger services, travel, filing fees and other costs. Bills for some costs are passed on directly, such as bills for certified shorthand reporters, technical consultants, and other professional fees.

Payment is due within ten days of the date of each fee and costs statement. Overdue statements will be charged interest of 10% per annum, compounded annually. If the City and/or the Agency (herein, "You" or "you") wishes to question any charge, you have agreed to do so within ten days of the statement date. Please contact the partner in charge of your matters if you have any questions about any of your bills.

- 2. [Intentionally Omitted].
- 3. **Estimates Not Binding**. Although we may furnish estimates of fees or costs that we anticipate will be incurred, these estimates are not intended to be binding, are subject to unforeseen circumstances, and are by their nature inexact.
- 4. <u>Termination by You</u>. You have the right at any time, in your sole discretion, to terminate our services and representation. Upon our termination, you will remain obligated to pay for all services rendered and costs or expenses paid or incurred on your behalf prior to the date of such termination or which are reasonably necessary thereafter.

- 5. Termination by Us. We reserve the absolute right to withdraw from representing you if, among other things, you fail to honor the terms of our agreement, you fail to cooperate fully or follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal, and we will be entitled to be paid at the time of withdrawal for all services rendered and costs and expenses paid or incurred on your behalf. If necessary in connection with litigation, we would request leave of court to withdraw.
- 6. <u>Date of Termination</u>. Our representation of you will be considered terminated at the earlier of (i) your termination of our representation, (ii) our withdrawal from our representation of you, or (iii) the substantial completion of our substantive work for you.
- 7. **Related Activities.** If any claim or action is brought against us or any personnel or agents of the firm based on your negligence or misconduct, or if we are asked to testify as a result of our representation of you or must defend the confidentiality of your communications in any proceeding, you agree to pay us for any resulting fees, costs, or damages, including our time, even if our representation of you has ended.
- 8. **No Guarantee of Outcome**. We do not and cannot guarantee any outcome in a matter.
- 9. <u>Insurance</u>. In accordance with the requirements of California Business and Professions Code § 6148, we advise you that this firm maintains professional errors and omissions insurance coverage applicable to the services to be rendered to you.
- 10. <u>Client</u>. This firm's client for the purpose of our representation is only the person or entity identified in the letter accompanying these Terms of Retention. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any parent, brother-sister, subsidiary, or affiliated corporation or entity, nor any of your or their officers, directors, agents, or employees.
- 11. **Payment Notwithstanding Dispute**. In the event of any dispute that relates to our entitlement to any payment from you, all undisputed amounts shall be paid by you. Any amounts in any client trust account held on your behalf, sufficient to pay the disputed amounts, shall continue to be held in such trust account until the final disposition of the dispute.
- 12. Arbitration. IN THE EVENT OF A DISPUTE REGARDING FEES, COSTS, OR ANY OTHER MATTER ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO OUR RELATIONSHIP WITH YOU, OR YOUR OR OUR PERFORMANCE OF THIS AGREEMENT, INCLUDING THE QUALITY OF THE SERVICES WHICH WE RENDER, THE DISPUTE SHALL BE DETERMINED, SETTLED AND RESOLVED BY CONFIDENTIAL ARBITRATION IN ORANGE COUNTY, CALIFORNIA. ANY AWARD SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE PARTIES, AND A JUDGMENT RENDERED THEREON MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. SHOULD YOU ELECT TO HAVE ANY FEE

DISPUTE ARBITRATED PURSUANT TO NONBINDING ARBITRATION UNDER STATUTORY OR CASE LAW, THEN SUCH NONBINDING ARBITRATION SHALL DETERMINE ONLY THE ISSUE OF THE AMOUNT OF FEES PROPERLY CHARGEABLE TO YOU. ANY OTHER CLAIMS OR DISPUTES BETWEEN US, INCLUDING CLAIMS FOR PROFESSIONAL NEGLIGENCE, SHALL REMAIN SUBJECT TO BINDING ARBITRATION PURSUANT TO THIS AGREEMENT.

Arbitration may be demanded by the sending of written notice to the other party. If arbitration is demanded, within 20 days of the demand you shall present a list of five qualified individuals who would be willing to serve that you would find acceptable to act as arbitrator. To serve as arbitrator, the individual must be a retired judge having served on any federal court or the California Superior Court or higher court in the State of California. Within 20 days of receiving your list, we may at our sole discretion (i) select any individual from that list and that individual shall serve as the arbitrator, or (ii) propose our own list of five individuals for arbitrator. If we choose to present a separate list, you may within 20 days select any individual from that list and that person shall serve as arbitrator. If no arbitrator can be agreed upon at the end of this process, each of us shall select one individual from our own respective list and those two persons shall jointly select the arbitrator. The arbitration shall be conducted pursuant to the procedures set forth in the California Code of Civil Procedure §§ 1280 et seq., and in that connection you and we agree that § 1283.05 thereof is applicable to any such arbitration. Nothing herein shall limit the right of the parties to stipulate and agree to conduct the arbitration pursuant to the then-current rules of the American Arbitration Association, the Judicial Arbitration & Mediation Services, or any other agreed-upon arbitration services provider.

AGREED:	
CITY OF MONTEBELLO	
By:	
City Manager	2012